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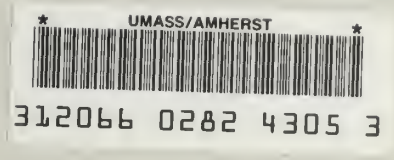

Municipal, County, District, and Local Authority

PROCUREMENT

Of Supplies, Services and Real Property

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Legal Requirements
Recommended Practices
Sources of Assistance

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Commonwealth of Massachusetts

Joseph R. Barresi
Inspector General

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CHAPTER ONE
INTRODUCTION

Procurements by local governments in Massachusetts are regulated by a variety of State statutes. This manual focuses on one set of procurements: those governed by Chapter 30B of the Massachusetts General Laws.

The legislation establishing Chapter 30B was sponsored by the Office of the Inspector General. The law is based on the American Bar Association's Model Procurement Code,[1] adapted to reflect specific Massachusetts practice and case law and the practical experience of a large number of local public officials responsible for procurement.

The underlying purposes and policies of Chapter 30B, identified by the Inspector General in his submission of the legislation to the General Court, are as follows:

1. To simplify, clarify, and modernize the law governing procurement by municipalities, districts, counties, and local authorities;

2. To make as consistent as possible the procurement laws regulating jurisdictions covered by Chapter 30B;

3. To increase public confidence in procedures followed in public procurement;

4. To ensure the fair and equitable treatment of all persons who offer to provide supplies or services to jurisdictions covered by Chapter 30B;

5. To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

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[1] The Model Procurement Code for State and Local Governments: Recommended Regulations, American Bar Association, August, 1980.

6. To foster effective broad-based competition within the free enterprise system; and

7. To provide safeguards for the maintenance of a procurement system of quality and integrity.

Purpose Of This Manual

Chapter 30B represents a comprehensive reform of municipal, county, district, and local authority purchasing statutes. This manual has been designed for use by officials of governmental bodies who are required to manage or oversee purchasing and who may need a ready reference on the legal and procedural requirements of Chapter 30B and related statutes. The manual provides an overview of the procurement process in lay terms. It identifies those steps in the process which are governed by specific statutory requirements, and for those steps which are not governed by statute, it offers guidance and suggestions.

Reading this manual will not make you an expert in public procurement. Any major or complex procurement should be administered by knowledgeable and experienced personnel. This manual is not a substitute for detailed procedures that should be developed and maintained by each governmental body. The specifics of the procurement process in each jurisdiction -- for example, what forms to use for requisitions, how to submit the forms, and who must approve procurements -- must be designed to meet any special acts, rules, regulations, charters, ordinances, or bylaws applicable to your jurisdiction.

What's Required And What's Not

This manual endeavors to distinguish clearly between required practices, which are mandated by law, and recommended

practices, which you are free to accept, modify, or reject in light of each procurement's individual circumstances.

For required practices, this manual includes references to the appropriate chapters and sections of the Massachusetts General Laws. For example, in discussing the delegation of a Chief Procurement Officer's powers and duties, Chapter Two of this manual cites G.L. c.30B, §19 (that is, Massachusetts General Laws, Chapter 30B, Section 19). If you have a question about a specific requirement, or if you are dealing with a particularly complex or unusual situation, take the time to read the relevant statute. Copies of the General Laws are available in most local libraries or from your attorney.

You should also note that some provisions of the law may be subject to differing interpretations. Although this manual makes every effort to interpret these requirements in light of any relevant legislative history, case law, and administrative rulings, the interpretations contained in this manual represent the opinions of the Office of the Inspector General, which do not have any formal status under law. However, the Office of the Inspector General does have enforcement powers under the provisions of G.L. c.30B, §17(d).

How To Get Additional Copies

Many jurisdictions will choose to have more than one person or department involved in making procurements covered by Chapter 30B. Additional copies of this manual may be purchased from the State Bookstore:

State Bookstore
Room 116
State House
Boston, MA 02133 Phone: (617) 727-2834

How To Get Updates

The Office of the Inspector General will periodically issue updates to this manual to reflect changes in statutes and regulations. To be placed on the mailing list to be notified of these updates, complete the form at the end of this chapter and return it to the Office of the Inspector General.

How to Get Additional Information

As with all other areas of municipal, county, district, and authority operation, the best source of guidance on the legal requirements is your attorney. The organizations listed in Appendix C at the end of this manual are also valuable sources of advice and assistance.

PROCUREMENT MANUAL UPDATE SERVICE

To be notified of updates to this manual, send this form to:

Procurement Manual Update Service
Office of the Inspector General
1 Ashburton Place
Boston, MA 02108

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CHAPTER TWO

GETTING STARTED: IMPLEMENTING CHAPTER 30B

Chapter 30B applies to all Massachusetts cities, towns, counties, districts, regional school districts, and local authorities (including housing and redevelopment authorities). The Inspector General's procurement reforms are designed to help local governments streamline purchasing practices by establishing clear, uniform rules for contracting for most supplies and services. The new law also raises thresholds for formal competition for many contracts, allowing you to simplify the award of small contracts and concentrate resources on larger purchases.

To ensure that your jurisdiction can take full advantage of these procurement reforms, including the new, higher bidding thresholds, you should consider taking the following actions as soon as possible:

1. Appoint a Chief Procurement Officer.
2. File the necessary delegation forms.
3. Make any necessary changes to local charters, bylaws, or ordinances in order to increase the dollar threshold for formal competition for contracts.

The remainder of this chapter discusses each of these recommendations in detail. For the sake of simplicity, this discussion will refer to all governmental entities covered by Chapter 30B as "jurisdictions."

Appointing A Chief Procurement Officer

Small communities as well as large cities can realize substantial savings through centralized purchasing. It is generally more efficient to consolidate purchases than to

require individual departments to make small, separate purchases. Buying in larger quantities also results in lower prices.

Chapter 30B strongly encourages centralized purchasing through the appointment of a "Chief Procurement Officer" (CPO) to oversee the procurement of all supplies and services.[2] In addition to helping your jurisdiction establish more uniform and efficient purchasing practices, appointing a CPO will allow you to take advantage of the procedures spelled out in Chapter 30B, §6, for awarding some contracts based on the request for proposals method.[3]

> What is the role of the Chief Procurement Officer? The CPO is responsible for all activities related to buying, leasing, renting, or otherwise acquiring supplies and services for all departments of the jurisdiction. [G.L. c.30B, §2].[4] This responsibility includes overseeing the solicitation and opening of bids, the evaluation of proposals, and the preparation and award of contracts. In short, the CPO ensures that contracting practices are carried out in accordance with State law and with all other applicable rules.

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[2]The CPO's powers and duties do not extend to real property transactions.

[3]The statutory procedures for the solicitation and evaluation of proposals using selection criteria in addition to price are explained in detail in Chapter Six of this manual. Because these procedures call into play substantial discretion on the part of the awarding authority in choosing the most advantageous proposal, the law requires that a duly appointed CPO oversee the procurement.

[4]Each jurisdiction can appoint only one CPO. Upon his or her appointment, however, the CPO can elect to delegate some or all purchasing functions to the heads of boards or departments, or to other employees. See the discussion of the delegation of procurement powers and duties under Chapter 30B in this chapter.

Under a completely centralized purchasing system, each department, such as the fire department, public works department, or library, submits its purchase requirements -- the items or services it needs, including specifications and selection criteria -- to the CPO. For contracts of $10,000 or more, the CPO reviews the requisition to ensure that the purchase description is adequate to prepare an invitation for bids or a request for proposals, and then conducts a competition under the procedures spelled out in Chapter 30B to select a vendor.

A centralized purchasing department can also award "blanket contracts" for standard items such as office supplies, which are used by many different departments. Under a blanket contract, each department can obtain supplies as needed from the vendor, taking advantage of the low prices obtained through bulk purchasing.

The CPO's responsibilities extend only to the business details of acquiring the supplies and services. The CPO does <u>not</u> have legal authority to exercise other powers, such as policy making, budget decisions, or final approval of contracts, which may be vested by statute or other rules in other officials -- for example, the mayor, city council, board of selectmen, school committee, or department heads.

The CPO (or a person delegated by the CPO, as explained later in this Chapter) should sign all contracts to certify compliance with all Chapter 30B requirements. In addition, other signatures (e.g., those of the mayor and the department head) may be required by statute, charter, bylaw or ordinance.

Who should be designated to serve as the Chief Procurement Officer? Your jurisdiction may already have an individual who acts as the CPO, such as a statutory purchasing agent (appointed pursuant to G.L. c.41, §103) or town manager. If so, there is no need to change his/her title; however, to avoid confusion, you should use the term "Chief Procurement Officer" in the description of duties. If your jurisdiction is designating an individual to oversee procurement for the first time, you may appoint a current employee or an elected official to serve this role; there is no requirement to hire someone new. If you are faced with staff reductions, this is a particularly good time to consider whether you can make more efficient use of your staff by centralizing the administrative tasks involved in procurement.

The most likely designees for the role of CPO are as follows: for a city, the statutory purchasing agent, the mayor or city manager, or a person designated by the mayor or city manager; for a town, the statutory purchasing agent, the town manager, a person designated by the town manager, the "circuit rider," the chairman of the board of selectmen, or other designee of the selectmen; for a county, the county purchasing agent, the county executive, or a designee of the county commissioners; for a district, a designee of the prudential committee or commission; for a regional school district, the superintendent, business officer, or other designee of the committee; for a housing, redevelopment, or other authority, the executive director or other designee of the board.

How is the Chief Procurement Officer appointed? Before a CPO is appointed, you should review all charter, bylaw, and ordinance provisions and make any changes needed to centralize purchasing for all departments. If, for

example, your charter specifies that the town manager shall purchase supplies, except that the school committee shall purchase supplies for the school department, the charter would have to be amended before a CPO could be appointed pursuant to Chapter 30B.

In any city or town which has appointed a statutory purchasing agent pursuant to G.L. c.41, §103, the purchasing agent will automatically constitute the CPO under G.L. c.30B. For any other municipality, the CPO can be appointed in accordance with the charter or bylaws; by the city or town manager if there are no charter or bylaw provisions; or by the selectmen if there is no town manager. [G.L. c.30B, §2].

For a county with a county executive, the county executive can make the appointment; in any other county, the county commissioners can appoint the CPO. The prudential committee or the commission can appoint the CPO for a district. The committee for a regional school district can make the appointment. [G.L. c.30B, §2]. The governing board of a housing, redevelopment or other municipal authority can designate the CPO for the authority.

Delegating Purchasing Powers

While Chapter 30B encourages centralized purchasing, it allows a CPO, once appointed, wide latitude to delegate powers and duties to other officials. A delegation can be very specific and limited to particular purchases, or it can be more general. Any delegation of the CPO's responsibilities must be in writing, signed, and filed with the Office of the Inspector General.

The purpose of the Chapter 30B delegation provisions is to clarify who bears responsibility for advertising, opening bids, overseeing the evaluation of proposals, and undertaking similar purchasing duties -- including signing contracts -- on behalf of the governmental body. It is permissible for the CPO, upon appointment, to delegate all Chapter 30B purchasing powers to separate department heads, such as the superintendent of schools, the director of public works, etc., thereby recreating the decentralized system that existed before the CPO's appointment. Alternatively, the CPO could delegate certain purchasing functions, such as advertising and bid opening, to individual departments while retaining responsibility for approving and signing all contracts. (Bear in mind that contracts must still be approved and executed in compliance with all other statutory requirements and local laws. Many municipal contracts, for example, must be signed by the mayor or city manager, and the department head.) The CPO might delegate only responsibility for purchases under $10,000, and oversee the procurement process for larger contract awards.

In short, Chapter 30B permits jurisdictions to consolidate purchasing responsibility, or to decentralize some or all contracting functions. You should carefully consider all decisions to delegate purchasing duties, so that you establish the most efficient and workable system for your community.

> How is a delegation of the Chief Procurement Officer's powers and duties accomplished? The CPO must specify in writing the particular responsibilities delegated and the job title of the employee who is empowered to undertake these responsibilities. A delegation of purchasing responsibility to the employee holding a particular position, such as the superintendent of schools or the director of the public works department, will be effective

as a delegation to any individual subsequently holding that position.

Note that under Chapter 30B, the CPO can only delegate procurement functions to other employees -- i.e., individuals who fill either elected or appointed positions. [G.L. c.30B, §19]. These powers and duties cannot be delegated to an individual supplying services to the jurisdiction as a vendor.

Once the delegation form has been filed with the Office of the Inspector General, the delegation will remain effective until amended or revoked unless the CPO has written in an expiration date on the delegation form.

Appendix A of this manual contains the delegation form to be completed by your CPO and filed for each delegation. It is recommended that you make copies of this form and retain these copies for future use. The original of each delegation form must be filed with the Office of the Inspector General. The Office of the Inspector General will record the delegation, assign an ID number, and return the original to you to maintain in your files. It is recommended that you send a copy of the form to the individual to whom you have delegated procurement responsibilities.

How can a delegation of purchasing responsibility be amended or revoked? Any amendment to or revocation of a delegation must also be made in writing and filed with the Office of the Inspector General.

Do I need to file a new delegation form if the person holding the procurement position is replaced? No. Since the delegation applies to the position rather than to the

individual occupying the position, there is no need to file a new delegation form if there is a change of staff. The authority of the individual employee to make procurements under a delegation will, of course, terminate automatically when that person leaves his or her position; the successor employee will automatically have authority to exercise responsibility under the delegation.

Should the Chief Procurement Officer file delegation forms for employees who work under his or her supervision? No. A formal delegation by the CPO constitutes a transfer of the responsibility for overseeing particular procurement functions. Staff working under the direction and supervision of the CPO can carry out activities such as advertising contracts, opening bids, and evaluating proposals without a formal delegation of power. The final responsibility for ensuring that these staff comply with all legal requirements will, of course, lie with the CPO.

By the same token, once the CPO has delegated powers and duties to other department heads, the staff supervised by those officials can handle purchasing activities without individual delegations. The department head to whom the authority has been formally delegated will be responsible for overseeing those procurement functions undertaken by his or her immediate staff.

What are the limitations on the purchasing responsibilities which can be delegated by the Chief Procurement Officer? In cities and towns which have a statutory purchasing agent, the responsibility for the procurement of all supplies conferred under G.L. c.41, §103, cannot be delegated through a Chapter 30B

delegation.[5] Only the additional responsibility conferred by Chapter 30B on the statutory purchasing agent for the procurement of services is subject to delegation. This means that municipalities which have created a centralized purchasing department by adopting G.L. c.41, §103, must maintain that centralized authority with respect to purchases of supplies. However, the CPO in those communities may elect, under Chapter 30B, to delegate to other departments the task of procuring their own contracts for services.

Local governments may also have charter, bylaw, or ordinance provisions governing the exercise of purchasing functions; any delegation of Chapter 30B powers and duties is subject to those provisions. [G.L. c.30B, §19]. For example, an ordinance which requires the town manager to purchase all supplies would prohibit the transfer of those responsibilities to others through a Chapter 30B delegation.

It is important to bear in mind that a CPO can only delegate the powers conferred on him or her by Chapter 30B -- i.e., the authority to procure contracts for supplies and services. All policy and budget decisions must be made by officials authorized to do so by other statutes or rules; such responsibilities cannot be shifted to other employees through a Chapter 30B delegation.

The CPO's responsibility for signing contracts to certify compliance with Chapter 30B requirements can be delegated.

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[5]G.L. c.30B, §19, expressly notes that the delegation of powers by the CPO is subject to the provisions of G.L. c.41, §103. That statute in turn provides that "the purchasing agent shall purchase all supplies for the city or town and for every department thereof except in case of emergency."

On the other hand, other statutes (for example, G.L. c.43, §29) or charter, bylaw or ordinance provisions may require that other officials (such as the mayor, the selectmen, or department heads) must sign contracts.

Increasing The Threshold For Formal Competition

Chapter 30B raises the thresholds set by State law for advertisement and competition for contracts awarded by local governments, including municipalities, counties, districts, regional school districts, and local authorities. Under this new law, all procurements of supplies and services of less than $1,000 can be made through sound business practices, and procurements of $1,000 to $10,000 can be made on the basis of quotations solicited over the telephone or in writing from three vendors. Advertising and solicitation of written bids or offers are required only for contracts of $10,000 or more.

In addition, the dollar threshold for competition under the municipal designer selection statute has been raised. The designer selection procedures which formerly applied to all municipal building projects with a construction cost of more than $10,000 now apply only to projects exceeding $100,000.[6]

You may take advantage of these higher contracting thresholds, subject to any restrictions imposed by your charter, bylaws, or ordinances. It is recommended that you confer with your attorney about any amendments needed to allow you to use these higher bidding thresholds.

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[6]The increased statutory threshold for designer selection procedures does not apply to counties or to housing authorities. Chapter 7, §38A½-N, still requires counties and housing authorities to use statutorily mandated procedures to award design contracts for all building projects with an estimated construction cost of more than $10,000.

CHAPTER THREE
OVERVIEW OF CHAPTER 30B

Chapter 30B sets out a comprehensive scheme governing public contracts for supplies, equipment, services, and real property. In addition to establishing uniform procedures for the competitive award of contracts, Chapter 30B clarifies the rules for modifying, amending, and renewing agreements, and for exercising options under contracts. This chapter provides an overview of the rules for public contracting under Chapter 30B.

Contracts For Supplies And Services

The great majority of agreements between local governments and private vendors of supplies and services are subject to Chapter 30B, regardless of what the parties may call those agreements. Specifically, Chapter 30B covers contracts to buy, purchase, rent, lease or otherwise acquire supplies or services.

Note that Chapter 30B applies to agreements to provide supplies or services to your jurisdiction even when those agreements do not involve payment by your jurisdiction to the contractor. For example, a city must solicit bids under Chapter 30B for a contract to tow illegally parked cars, even though the towing charges will be paid by the car owners, if the value of the services performed under the contract (as opposed to the amount the city receives from the towing contractor) will be $10,000 or more. Since the towing contract does not call for any payment by the city, the contract will be awarded to the bidder offering to pay the highest amount to the city.

What are supplies? "Supplies" are defined under the law as "all property, other than real property, including

equipment, materials,[7] printing, and insurance,[8] and further including services incidental to the delivery, conveyance and installation of such property." [G.L. c.30B, §2].

What are services? "Services" are defined as "the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports."

Under Chapter 30B, the definition of "services" does not include the following:

-- Employment agreements, in which the awarding authority and the individual have the legal relationship of employer and employee;

-- Collective bargaining agreements; and

-- Grant agreements, which involve grants to individuals or nonprofit entities for the public purpose of support or stimulation, rather than for the procurement of supplies or services. [G.L. c. 30B, §2].

These kinds of contracts can be entered into without regard to Chapter 30B.

Contracts for certain kinds of professional services are also specifically exempted from Chapter 30B. See "Exemptions From Chapter 30B" in this chapter for a listing of these exempt services.

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[7]Contracts exceeding $25,000 for materials used for construction-related work on public works or buildings must be awarded under the construction bidding laws, G.L. c.30, §39M, or G.L. c.149, §§44A-H. See footnote 10 in this chapter.

[8]Some contracts for insurance are exempted from the Chapter 30B procurement procedures. See "Exemptions From Chapter 30B" in this chapter for a listing of exemptions.

Are oral agreements permissible under Chapter 30B? Chapter 30B requires all contracts of $5,000 or more to be in writing.[9] No payment can be made under such a contract prior to the written execution of the agreement. [G.L. c.30B, §17(a)].

In addition to the Chapter 30B requirement that contracts be in writing, all contracts must be approved and executed in accordance with the statutory provisions and other rules that apply to your jurisdiction. For example, in cities operating under plans A, B, C, and F, all contracts of $5,000 or more must be signed by both the department head and the mayor. For cities operating under plans D and E, contracts must be signed by the department head and the city manager. In other jurisdictions, you must refer to charter, ordinance, or bylaw requirements.

If your jurisdiction appoints a Chief Procurement Officer (CPO), that person or his or her delegate should also sign all contracts to certify that the award was made in compliance with Chapter 30B requirements.

How are contracts for under $10,000 awarded? Under Chapter 30B, contracts for supplies and services for up to $10,000 can be awarded through a simplified process. Your jurisdiction may choose to require written price quotes for contracts under $10,000, or to require that these

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[9]If your jurisdiction uses a system of purchase orders, you must retain -- at a minimum -- a written purchase order and an acknowledgment signed by the vendor for each procurement between $5,000 and $10,000 in order to comply with the Chapter 30B requirement that all contracts of $5,000 or more be in writing. Consult with your attorney about any contracting system that does not use a single contract document signed by both parties.

contracts be awarded under the formal Chapter 30B advertising and bidding procedures. If you do not choose to adopt more formal procedures, you can award smaller contracts by following these rules:

-- Contracts under $1,000: Awarding authorities have discretion to make purchases under $1,000, using sound business practices. [G.L. c.30B, §4(c)]. The law does not require competition for these small purchases. Nevertheless, you should have some basis for determining that you are buying supplies and services at reasonable prices. It is recommended that you solicit price lists or quotations from competing vendors on a regular basis to make sure you are getting favorable prices for all purchases.

-- Contracts from $1,000 to $10,000: Procurements in the amount of $1,000 to $10,000 can be made by seeking prices from at least three vendors, either in writing or over the telephone. The contract must be awarded to the responsible person offering the supply or service needed for the lowest price. [G.L. c.30B, §4(b)].

Whether you solicit written or oral quotes for contracts from $1,000 to $10,000, you must prepare a written description which includes all of your purchase requirements. This purchase description must be maintained in your files as part of your written record of the procurement, along with the names and addresses of all persons from whom quotations were sought, the names of persons submitting quotations, and the date and amount of each quotation. Every price quotation must be based on all of the requirements included in the purchase description and no others. If you decide to change any of your purchase requirements, you must resolicit prices from all competitors, using the new purchase description.

Since there are no sealed bids under these simplified procedures, you are free to negotiate with the vendors to lower their original price quotes, so long as you treat all vendors equally. This means that if you elect to tell any vendor what the other price quotes are, you must give this information to all vendors, and afford everyone an equal opportunity to underbid the competition. In no event, however, can you allow a vendor to increase his or her original price quote.

How are contracts for $10,000 or more awarded? Chapter 30B sets out in detail procedures to ensure fair and open competition for major procurements. Chapter Four of this manual discusses the preliminary steps you need to take before advertising contracts. After you have finished your preliminary planning, you will select one of two alternative competitive procurement methods:

-- Invitation for bids (IFB): For almost all procurements, you will determine all of the specifications for the supplies or services you need and set minimum requirements for bidders. The contract will be awarded to the lowest qualified bidder who meets your specifications. [G.L. c.30B, §5]. Chapter Five of this manual describes the step-by-step procedures for preparing an IFB, advertising, opening bids, and awarding the contract.

-- Request for proposals (RFP): In some cases, it is appropriate to compare competing proposals and to evaluate them using specific criteria in addition to price. The contract will be awarded to the offeror submitting the most advantageous proposal. [G.L. c.30B, §6]. Because this process brings into play substantial discretion on the part of the awarding authority in choosing the most advantageous offer, the law requires that a duly appointed CPO be responsible for overseeing the procurement. Chapter Six of this manual provides a step-by-step guide for preparing an RFP, advertising, opening and evaluating proposals, and awarding the contract.

Construction Contracts For $25,000 Or Less

Contracts estimated to cost more than $5,000 for construction, maintenance, and repair work on public works or buildings are subject to the State's construction bidding laws, G.L. c. 30, §39M, and G.L. c.149, §§44A-H. Contracts for the purchase of

materials used in construction are also subject to these construction bidding laws.[10]

However, for construction projects estimated to cost from $5,000 to $25,000, awarding authorities now have the option of following the requirements of the construction bid laws or of using the Chapter 30B procurement procedures. [G.L. c.30, §39M(d)(4)].

This means that typical repair or maintenance contracts and purchases of construction materials up to $25,000 can be made using the simpler Chapter 30B rules for procuring supplies and services. Since Chapter 30B sets the threshold for soliciting formal, written bids at $10,000, it is now permissible to award smaller construction contracts on the basis of an informal solicitation of quotations over the telephone from three vendors. Construction contracts for $10,000 to $25,000 can be awarded by following the bidding procedures set forth in Chapter Five of this manual.

Acquisitions And Dispositions Of Real Property

Chapter 30B applies to agreements to rent, convey, or otherwise dispose of real property, or to acquire real property by purchase or rental, regardless of what the parties may call those agreements. This law does not, however, apply to residential rentals to qualified tenants by a housing or redevelopment authority. [G.L. c.30B, §16].

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[10]For a complete discussion of the legal requirements and recommended practices for awarding construction contracts, see Designing And Constructing Municipal Facilities, issued by the Office of the Inspector General. This publication is available from the State Bookstore, Room 116, State House, Boston, MA 02133.

Under Chapter 30B, a local government must solicit proposals to acquire an interest in real property at a cost of more than $500, or to dispose of an interest that has a market value of more than $500. Chapter Eight of this manual provides a step-by-step guide to advertising and soliciting proposals for real property.

Dispositions Of Surplus Supplies

Chapter 30B applies to the disposition of any surplus supplies which have a resale or salvage value. A local government must offer for sale any supply with a net value of $500 or more through a solicitation for sealed bids, a public auction, or an established market. [G.L. c.30B, §15]. Chapter Nine of this manual describes in detail the procedures for disposing of surplus supplies.

Extensions, Renewals, And Exercises Of Options

The extension or renewal of an existing contract is subject to Chapter 30B. There are strict limits on the use of extension, renewal, and purchase options. [G.L. c.30B, §12]. An extension, renewal, or purchase option cannot be exercised unless the terms were advertised as part of the original solicitation and unless the awarding authority has sole discretion -- without the assent of the contractor -- to exercise the option.

Before exercising any renewal, extension, or purchase option, the awarding authority must determine whether it is more advantageous to exercise the option, or to undertake a new procurement. [G.L. c.30B, §12(e)]. This determination requires a reasonable investigation of the cost and benefits, and must be documented in writing. At a minimum, you should solicit quotes from three competing vendors prior to the date for

extending or renewing any existing contract, or exercising a purchase option; if you do so, you should follow the guidelines in this chapter for soliciting quotes for contracts between $1,000 and $10,000. Before renewing or extending a large contract, you should consider conducting a formal, advertised competition for the term of the renewal or extension; you would exercise the option only if you receive no better bid or proposal.

Any contract subject to Chapter 30B which was awarded without following the competitive procedures currently required by the law, even if it was awarded prior to May 1, 1990 -- the effective date of Chapter 30B -- cannot be extended or renewed. Similarly, after May 1, 1990, a purchase option subject to Chapter 30B cannot be exercised under an agreement if the original contract award did not comply with Chapter 30B.

You should also be aware that the renewal or extension of a contract is subject to the same signature requirements as the original contract. If you have a CPO, the CPO (or his or her delegate) must sign the renewal, extension or exercise of the option, as must all other officials whose approval is required to bind the awarding authority to contracts.

Exemptions From Chapter 30B

The following are exempt from the requirements of Chapter 30B:[11]

1. Contracts for construction work and for the purchase of construction materials under the provisions of G.L. c.30, §39M or G.L. c.149, §§44A-H. (See "Construction Contracts For $25,000 Or Less" in this chapter for a discussion of

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[11]See Chapter Seven of this manual for information on sole-source and emergency procurements under Chapter 30B.

small construction contracts, which can, at the option of the awarding authority, be awarded under Chapter 30B.)

2. Contracts for design services for building projects, subject to the Designer Selection Law, G.L. c.7, §38A½-N.

3. Intergovernmental agreements entered into by two or more local governmental units, pursuant to G.L. c.40, §4A.

4. Transactions with the Commonwealth.

5. Contracts to purchase materials at prices established by the State's Department of Public Works through competitive bidding, for highway or road construction work, under the provisions of G.L. c.81 or G.L. c.90.

6. Contracts for advertising required notices.

7. Agreements between agencies, boards, commissions, authorities, departments, or public instrumentalities of one city or town.

8. Agreements for the provision of special education, pursuant to G.L. c.71B.

9. Contracts to purchase supplies or services from the Federal government, the Commonwealth, or any of its political subdivisions.

10. The issuance of bonds, notes, or securities.

11. Contracts for deferred compensation programs for employees, under G.L. c.35, §§57 and 57A.

12. Contracts for employee group insurance, under G.L. c.32B.

13. Contracts for governmental unit insurance pools, under G.L. c.40M, §§1-16, and for worker's compensation self-insurance groups, under G.L. c.152, §§25E-U.

14. Contracts for the following professional services:

    -- Expert witnesses, for use in adjudicatory proceedings or litigation;

    -- Labor relations representatives;

    -- Physicians and dentists;

    -- Lawyers;

-- Designers, including any person performing the preparation of master plans, studies, surveys, soil tests, cost estimates or programs, drawings, plans, specifications, supervision or adminstration of a construction contract, or construction management or scheduling, in connection with any building or public works project;[12] and

-- Certified public accountants.[13]

15. Contracts entered into by a municipal gas or electric department governed by a municipal light board under G.L. c.164, §55, or by a municipal light commission under G.L. c.164, §56A. However, such a board or commission can, by majority vote, accept the provisions of Chapter 30B;[14]

16. Purchases made pursuant to a blanket contract awarded to a vendor by the Commonwealth.

17. Agreements to maintain deposits with banking institutions in exchange for banking services (compensating balance accounts), pursuant to G.L. c.44, §53F. Such agreements must be procured in accordance with Department of Revenue regulations.

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[12]Design services in connection with a building must be procured under the Designer Selection Law, G.L. c.7, §38A½-N. It is strongly recommended that you procure design services (e.g., engineering services) in connection with other public works -- sewer or water lines, roads, bridges, landfills, landscaping -- following the procedures of G.L. c.7, §38A½-N. Alternatively, it is recommended that you select engineers through the RFP process set forth in Chapter 30B, §6. Chapter Six of this manual provides more information on the RFP process.

[13]It is strongly recommended that CPAs be selected via the RFP procedures set out in Chapter 30B and described in Chapter Six of this manual. The National Intergovernmental Audit Forum, chaired by the Comptroller General of the United States, has stated that "[p]ublic entities should never select auditors without . . . fostering competition by soliciting proposals." A nationwide study by the General Accounting Office disclosed that public entities with ineffective procurement systems stand a fifty per cent chance of receiving a substandard audit.

[14]It is strongly recommended that municipal light boards and commissions accept the provisions of Chapter 30B. There is no sound reason for failing to do so.

Multi-Year Contracts

Chapter 30B permits local governments to enter into contracts for any period of time. Any contract in excess of three years, including any renewal, extension, or option provision, however, must be authorized by a majority vote of the applicable governing body, prior to the solicitation for bids or proposals. [G.L. c.30B, §12]. The authorization may apply to a single contract in excess of three years, or it may specify time limits for any number or types of contracts. The majority vote required to approve multi-year contracts is defined as follows:

-- For towns or districts: a majority vote taken at a duly called town or district meeting.

-- For cities: a majority vote of the city council or the city commissioners, and the approval of the mayor, if such approval is required under the city charter.

-- For counties: a majority vote of the county commission.

-- For regional school districts: an affirmative vote by two-thirds of the members of the school committee.

-- For a redevelopment, housing, or other authority: a majority vote of the governing board.

No contract can be entered into until the funds for the first fiscal year are available. The payment and performance obligations for each succeeding year of a multi-year contract will be subject to the appropriation or other availability of funds (e.g., State or Federal grants). [G.L. c.30B, §12(a)].

An invitation for bids or a request for proposals for any contract for a term of more than one year, including any extension or renewal, must include the following information:

-- The term of the contract and the conditions for renewal, extension, or purchase options. Every multi-year contract must have a definite term of duration, and this term must be included in the solicitation. This means that at the time of execution, every contract must have a set final expiration date. Any renewal or extension of the contract beyond that date must be done in compliance with the conditions set forth in the original solicitation, and requires the execution of a written notice of extension or renewal, signed by officials authorized to bind the awarding authority to contracts. Under Chapter 30B, it is not permissible to enter into a "self-renewing" agreement, which is extended automatically from year to year.

   If the contract contains an option for renewal, extension, or purchase, the solicitation must state that the option will be exercised at the sole discretion of the awarding authority, and that it is not subject to agreement or acceptance by the contractor. (You must bear in mind that the exercise of any option requires a determination that it is advantageous to the awarding authority. See "Extensions, Renewals, And Exercises Of Options" in this chapter for a discussion of this requirement.)

-- The total amount of supplies or services to be provided for the entire contract period. You must specify whether this amount is an actual or an estimated figure.

-- The requirement that the bidder or proposer provide unit prices for all supplies and services. The unit prices must remain the same throughout the contract period unless the solicitation and the resulting contract provide for price adjustments. The formula for determining any price adjustments must be specified; it is permissible to use a fixed percentage or an index. It is not permissible to include a negotiable price adjustment to be determined at a future date.

-- The price proposal submission requirements. Since the solicitation must include a definite term of duration, you may not ask bidders or proposers to provide price alternatives for agreements of differing lengths. This kind of solicitation defers a significant specification decision -- the duration of the contract -- until the bids or proposals have been opened. Under these conditions, fair competition is impossible.

   Comparing prices for a multi-year contract can be complicated. There are three possible methods for soliciting prices which can be meaningfully compared:

1. You may require offerors to submit prices which will remain constant for the entire contract term. Under this approach, price comparison is simple.

2. You may require offerors to submit prices for the first year of the contract which will be adjusted for each succeeding year according to a set formula which you specify in the IFB or the RFP. You could specify, for example, that the price will be adjusted annually according to a specific price index.

3. You may allow offerors to submit different prices for each year of the contract. If you use this method for soliciting prices, you will have to use a formula for calculating the discounted present value of payments made in order to realistically compare the costs. The formula must be included in the invitation for bids or the request for proposals.

-- A notice that the contract will be cancelled if funds are not appropriated or otherwise made available to support the continuation of the agreement after the first fiscal year. Every multi-year contract must be expressly subject to the annual appropriation or other availability of funds (e.g., contingent on State or Federal grants), with one exception: a city or town may enter into a contract for the disposal of garbage or refuse for a period of up to twenty years, with the provision that the municipality will be liable for payments regardless of whether the funds are appropriated each year. A city or town can only enter into such an agreement after authorization by a majority vote (as defined earlier in this chapter) and the approval of the Emergency Finance Board. [G.L. c.30B, §12(f)].

Contract Amendments

Under Chapter 30B, it is not permissible to increase the quantity of supplies or services called for in a contract by more than ten per cent. If you determine after awarding a contract that you will require a larger increase, you must readvertise and award a new contract for the additional supplies or services. This means that extra work or change orders cannot be approved if they total more than ten per cent of the contract price. The only exceptions to this rule are contracts for the purchase of gasoline, fuel oil, or road salt,

which can be increased by a larger amount. [G.L. c.30B, §13]. If the additional supplies or services required will cost less than $10,000, you can award a new contract by soliciting quotations from three vendors. See the discussion earlier in this chapter of the procedures for awarding contracts from $1,000 to $10,000.

Chapter 30B also contains the following specific requirements for any quantity increase in a contract: the unit price of the additional supplies or services must be the same or less than the original contract price; the procurement officer must determine in writing that the increase is necessary, and is more practical and economical than awarding a new contract; and both parties must agree to the increase in writing. [G.L. c.30, §13].

In addition to the express limitations contained in Chapter 30B, Massachusetts case law prohibits any substantial alteration to the terms and conditions of any contract which is required to be competitively procured. The only amendments which can be made to such a contract are minor changes, incidental to the original agreement. The Supreme Judicial Court has found, for example, that a change in the method for determining payment under a contract which resulted in a significant cost increase violated the competitive bidding laws. Any amendment that significantly changes the scope, nature, or magnitude requires readvertising and the award of a new contract. Similarly, any change in the identity of the contractor -- for example, a sale or assignment of the contract to another entity -- is inconsistent with Chapter 30B.

These rules limit the modification of any contract subject to Chapter 30B, including contracts awarded prior to the effective date of this law. For example, if you awarded a three-year contract for waste disposal services in 1989, you cannot, after

May 1, 1990, negotiate a one-year extension of that contract. A substantial change in the original agreement after May 1, 1990, will trigger all of the statutory requirements which apply to award of a new contract.

Chapter 30B Record-Keeping Requirements

All written documents required under Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. All of these records must be available for public inspection, except that proposals submitted by offerors in response to a request for proposals remain confidential until the completion of the evaluations. [G.L. c.30B, §3].

For all procurements of supplies or services from $1,000 to $10,000, you must maintain a written record which includes the purchase specifications, the names and addressees of all persons from whom quotations were sought, and the date and amount of each quotation.

For all contracts awarded in the amount of $5,000 or more, there must be a file for each contract which contains all required written documents, including the executed contract and any amendments to the contract. [G.L. c.30B, §17(a)]. If the contract was awarded pursuant to a formal solicitation, the file will include the invitation for bids or request for proposals, the public notices and advertisements, the bids or proposals submitted, written evaluations of proposals, the executed contract, and any amendments.

Chapter 30B Enforcement Provisions

Chapter 30B expressly forbids bid-splitting: i.e., the splitting or dividing of any procurement for the purpose of

evading the legal requirements of Chapter 30B. [G.L. c.30B, §11].

Chapter 30B contains two enforcement provisions to ensure that contracts are awarded in compliance with the law:

1. No payment can be made under an invalid agreement. Any contract awarded in violation of Chapter 30B will be invalid. The law prohibits any payment by a governmental body under such an invalid contract, even if supplies have been provided or work has been performed. [G.L. c.30B, §17(b)]. This is a strict and longstanding rule in Massachusetts. It must be followed in every case where a substantial violation of the Chapter 30B procedures has occurred, even if all parties have acted in good faith. However, minor informalities in the contracting process will not invalidate a contract.[15]

2. Civil penalties can be imposed for violations of Chapter 30B. Any person who causes or who conspires with another to cause a contract to be solicited or awarded in violation of the Chapter 30B requirements can be required to pay a fine of up to $2,000 to the appropriate governmental body for each violation. In addition to such a fine, the person may be required to pay double the amount of damages sustained by the governmental body by reason of the violation, together with the costs of the action. The Inspector General is empowered to institute proceedings to enforce Chapter 30B. [G.L. c.30, §17].

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[15] Minor informalities are technical deviations from the required procedures, insignificant mistakes, and matters of form rather than substance, which do not significantly interfere with full and fair competition. [G.L. c.30B, §2].

CHAPTER FOUR

PLANNING FOR PROCUREMENT OF SUPPLIES AND SERVICES: A STEP-BY-STEP GUIDE

The objective of your purchasing system is to obtain what your jurisdiction needs as efficiently and economically as you reasonably can. Meeting this objective requires some planning. Precisely how much work is involved in adequately planning your procurements varies from purchase to purchase, and largely depends on the complexity of what you are procuring. This chapter walks you through a series of steps and considerations that will help you plan effectively. Some of these steps may be curtailed or omitted for small purchases. For the most part, these steps apply to making large purchases, to using bids or proposals, and to acquiring and disposing of supplies and real property. Consequently, later chapters in this manual will sometimes refer you to sections of this chapter.

Step 1: Determine what you need.

The obvious first step is determining what you need. Needs may arise, for example, because your inventory of supplies is depleted, because a new project requires some special supplies or services, or because a department head makes a special request. Often, identifying what you need will be simple, as when your inventory of stationery is low and you need to buy the same type of stationery that you have bought in the past. In other cases, a procurement may be unavoidably complex, as in acquiring a central computer and a local area network, or obtaining financial consulting services.

Researching the market is often essential, and an ongoing effort to collect market information may be worthwhile. For example:

-- Have technological advances recently been made, or will they soon be available? If so, you may want to defer a purchase to ensure that what you buy is not obsolete. Alternatively, you may want to wait and buy the older technology after the newer technology is released, possibly realizing savings.

-- Are supplier inventories currently high or low? If suppliers are overstocked, you may realize some savings and you may want to purchase supplies to last a longer period of time. If supplies are low, you may want to defer the purchase or buy only what you need for the time being.

-- Do prices for what you are buying change due to seasonal demands? If so, you may be able to realize savings by buying before or after the season.

Each of the above examples involve a certain amount of crystal ball-gazing -- which means that they entail risk. Therefore, you must consider the accuracy of your market information and the amount of risk you and your jurisdiction are willing to assume.

Of course, if you are making procurements for other departments, the users should play the central role in determining what they need to effectively serve your jurisdiction. They are often in the best position to know what advances have been made in their field, such as, for example, new materials or equipment that may improve their department's productivity. Your role will be to assist and advise them in identifying what is needed and considering alternatives.

In some cases -- for example, the acquisition of a sophisticated central computer system -- your jurisdiction may not have employees with the expertise required to adequately consider alternatives and identify what is necessary to address specific needs. In such cases, it is best to obtain the necessary expertise, even if that means using a paid consultant. It is not prudent, however, to rely on a

consultant to define your jurisdiction's needs if that consultant may also obtain a contract to fulfill those needs. By the same token, you should not rely on a supplier to write specifications for a supply contract.

Whether your jurisdiction's needs are simple or complex, an adequate needs assessment is essential in order to ensure that you procure what your jurisdiction actually needs and not pay more than you must. Rather than being wasted, time spent on identifying your needs is a good investment.

Step 2: Determine whether you can purchase what you need through existing contracts.

When you have a clear idea of what you need, the most efficient means of making the purchase is probably through existing contracts. Existing contracts that may be available to you include:

Your own jurisdiction's contracts. For example, if you need stationery for your department, you should check to see if your jurisdiction has a valid stationery contract for all departments and buy what you need off that contract. If you are not certain, check with your Chief Procurement Officer (CPO), if your jurisdiction has appointed one.

Collective agreements with other jurisdictions. Is your jurisdiction a party to a collective purchasing agreement with other jurisdictions pursuant to G.L. c.7, §22B? If so, make the purchase off that contract. If you are not certain if your jurisdiction is party to a collective purchasing agreement, check with your CPO, if your jurisdiction has appointed one.

Contracts of the State Purchasing Agent. Under G.L. c.7, §22A, your jurisdiction may make purchases under contracts awarded by the State Purchasing Agent. These are large volume contracts that may offer you significant savings of money and effort. Information on using these contracts is included in Appendix B at the end of this manual.

If you can buy what you need using an existing contract, simply execute the steps that are necessary to make purchases under that contract. Note that if your jurisdiction already has a valid contract for the supplies or services you need -- either directly or through a collective agreement with other jurisdictions -- purchasing the supplies or services from sources other than those existing contracts may violate Chapter 30B's bid-splitting prohibition.

Step 3: Combine your needs.

As a rule, you will realize savings by purchasing in larger volumes. Vendors may price supplies and services more aggressively when large volumes are involved, and large volumes will often serve to attract greater competition. Volume purchasing also results in administrative efficiencies, since you can concentrate on a few large procurements rather than many small procurements.

To realize the benefits of volume purchasing, you should review your purchasing needs over a period of time -- at least for the upcoming fiscal or school year -- and identify the amount of supplies or services you will need. Consider your jurisdiction's purchases in prior years and any special or unusual needs that you expect during the period for which you are making the purchase.

Also, combine like items or services in one procurement wherever feasible. For example, if you can reasonably anticipate needing a large number of vehicle replacement parts for your jurisdiction's fleet, include all the parts in one solicitation -- most auto supply dealers will be able to bid on most, if not all, of the items in the bid package. If there are items that only one or a few suppliers can provide, bid those items separately.

However, you should not combine unrelated items or services in one contract. It's important to think through the question of whether it makes sense to require vendors to submit bids or proposals for everything in a package. It is permissible, and may be preferable, to use one solicitation for a large number of different items and specify that each item will be procured from the vendor offering the lowest price for that item. If vendors typically provide some but not all of the items or services you request in your solicitation, they will have to purchase the items (and mark them up) for resale to you, and you may ultimately pay a premium.

Combining your needs is a good idea and, in some cases, it is required under Chapter 30B. For example, if you anticipate needing 15 desks that will cost about $300 each, for a total of $4,500, you may not elect to buy each desk separately for the purpose of avoiding the Chapter 30B requirements applicable to the larger purchase. A $300 purchase requires only "the exercise of sound business practices"; a $4,500 purchase requires solicitation of three written or oral quotes. You may not split the bid in order to avoid making three telephone calls.

State statutes offer you another opportunity for volume purchasing: entering into collective purchasing agreements with other jurisdictions. Under G.L. c.7, §22B, two or more jurisdictions may jointly contract with vendors for materials, supplies, equipment or services. Typically, one of the jurisdictions will assume the lead role in making the procurement, acting as the purchasing agent for the group. The contract must be procured under the requirements of Chapter 30B, and each jurisdiction must accept sole responsibility for any payment due the vendor for its share of the purchase. Collective purchasing agreements can save you time and money.

Step 4: Estimate the value of the contract.

The procedures you must use under Chapter 30B depend on the value of the contract you will sign with the successful bidder. There are three important thresholds:

-- For contracts under $1,000, you must use sound business practices.

-- For contracts with a value of $1,000 or more, but under $10,000, you must at least seek three telephone quotes from vendors.

-- For contracts of $10,000 or more, you must advertise and solicit competitive sealed bids or proposals. These procedures are discussed in the two chapters that follow.

Remember that these are minimum thresholds. If your jurisdiction has established lower thresholds or more stringent requirements by charter, ordinance, or bylaw, you must adhere to those local thresholds or requirements. If you have any question about the requirements in your jurisdiction, check with either your CPO or your counsel.

What if my initial estimate is wrong? You may not enter into a contract unless you have used the appropriate procedures. It is not your estimate that counts under the law, but the actual contract value. Thus, for example, if you have estimated the value of a contract at $9,000, and find that your three telephone quotes produced a best price of $11,000, you may not execute the contract for $11,000. Instead, you must follow the competitive sealed bid or proposal procedures mandated by Chapter 30B for contracts of $10,000 or more.

Step 5: Determine the length of the contract.

Under Chapter 30B, your jurisdiction may -- subject to local ordinances, bylaws, or rules -- enter into a procurement contract for any period of time up to three years, including the term of any renewal, extension, or option. A contract with a term of more than three years, including the term of any renewal, extension, or option, is permissible only if, by a majority vote of the governing body of your jurisdiction, longer contracts have been authorized. The process for authorizing longer contracts is discussed in greater detail in Chapter Three of this manual.

You should therefore determine the contract length that would best serve your jurisdiction's needs. As you make this determination, keep in mind that both short-term and long-term contracts involve tradeoffs. For example, a three-year contract term will lock in prices and avoid the need for a separate procurement each year. However, if prices fall, you may end up paying more than you would under a shorter contract. Longer contracts make sense in some cases. For example, if vendors will incur high start-up costs, a longer contract term allows them to spread the start-up costs over a period of years. When considering the length of the contract, you must also decide whether to provide for any renewal or extension. Contract renewals and extensions are discussed in Chapter Three of this manual.

Step 6: Develop the purchase description.

You must describe to vendors what you need in sufficient detail to ensure that you receive responsive bids or proposals that can be priced and compared in a fair manner. The term used in Chapter 30B for your presentation of what you want to buy is the "purchase description." A sufficient purchase description

for some items, such as office supplies, may be only a few words for each item. For more complex procurements, the purchase description will include more detailed "specifications" -- that is, particulars regarding size, dimensions, quality, performance, warranties, installation, and terms. A purchase description may also include a "scope of services," detailing specific services, including the "work products" or "deliverables" to be produced under the contract.

An inadequate purchase description renders effective competition impossible. Would-be vendors will not know what you are seeking and will be unable to offer a reliable price. A vague purchase description is likely to result in the need to cancel a procurement. If you do award a contract, you may pay for supplies or services your jurisdiction does not need, and you are likely to have disputes over what the contract does or does not require. Effort spent at the outset on a clear purchase description is a good investment.

Under Chapter 30B, for a contract of at least $1,000 but less than $10,000, the purchase description must be sufficient for vendors to respond to your telephone solicitation. The purchase description should be written. You may read it over the telephone, or you may choose to send it, to three vendors. In either case, you must give the same description to each of the three vendors.

For a contract of $10,000 or more, you must issue a written purchase description as part of the advertised solicitation. Preparation of the purchase description is by far the most difficult -- and most important -- step of any procurement. It may be helpful to bear in mind two fundamental points. First, don't reinvent the wheel: borrow freely from the experience of others. It is highly unlikely that yours is the first jurisdiction to procure the supply or service you are trying to

describe. Call around -- to other jurisdictions, to the State Purchasing Agent, to national organizations such as the National Institute of Governmental Purchasing. (Appendix C of this manual lists selected sources of advice and assistance, including NIGP.) Find purchase descriptions that others have used successfully, and adapt these to your needs. If you are writing specifications for a frequently used supply or service from scratch, you are making your first mistake.

Second, if you experience difficulty in preparing a purchase description for a given procurement, it may be that you have not adequately defined your needs. If this is the case, you are not ready to procure a solution, and you should return to the first step of the process: determining your needs.

Typical components of a purchase description are discussed below.

Description of the supplies or services required. Each supply or service must be listed and described in sufficient detail for all vendors to understand what you need. If you have samples, drawings, or other documents, either append them to the purchase description or incorporate them by reference and tell vendors where they may obtain or review the documents. When purchasing a service, clearly specify the service or services vendors will be required to perform and the documents, reports, and materials they will be required to deliver (these are sometimes called "deliverables"). Remember that if you fail to include something you want in the purchase description, the contract will not require a vendor to supply it.

> May I hold a bidders' or proposers' conference to supplement the purchase description? Yes. A conference may be necessary if, for example, vendors must examine the physical conditions of a site in order to prepare bids or

proposals. However, if your bid or proposal documents are sufficiently detailed, a conference to answer questions about them will usually be unnecessary. Keep in mind that your procurement must be fair to all vendors. You may notify interested vendors that you will accept questions in writing; the questions and your answers should then be distributed to all vendors receiving the IFB or RFP. If you do plan to hold a conference, include notice of the conference in the IFB or RFP; keep minutes of the meeting, carefully noting comments made, all questions asked, and all answers given; and distribute the minutes to all vendors in time for them to consider the information in compiling their bids or proposals.

May I use a proprietary specification? A proprietary specification is a purchase description which relies on use of a company or brand name, or references one company's product or service, to describe the supply or service being procured. You may use a proprietary specification only if no other manner of description suffices. If you use a proprietary specification, you must explain in writing why it is necessary to do so. [G.L. c.30B, §14]. Note that although you are permitted to use a proprietary specification when necessary, you may not make a sole-source procurement except under very limited circumstances. (Sole-source procurements are addressed in Chapter Seven of this manual.)

May I present my needs as a problem and ask vendors to suggest solutions? No. You must define your needs. You may not rely on vendors, in effect, to write their own purchase descriptions. Massachusetts courts have frowned on "problem-oriented" or "open-ended" IFBs or RFPs. It is the awarding authority's responsibility to define what it needs with as much specificity as possible so that vendors

are offering supplies, services, and prices on a clearly defined -- and level -- playing field.

Quantities required. You must specify the quantity of each supply and/or service you need, and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices. If you use an estimate, make it as realistic as you can, because under Chapter 30B you may not increase the quantity of supplies or services called for in a contract by more than 10 per cent. [G.L. c.30B, §13]. If you find during the contract that you will require a larger increase, you must award a new contract for the additional supplies or services under the provisions of Chapter 30B.[16]

Is it permissible to combine supplies and services in a single procurement? It is permissible and, in some cases, preferable. For example, if you are procuring a mainframe computer, it will often be efficient and cost-effective for your jurisdiction to procure maintenance services for the computer via the same contract. Similarly, if you are procuring food preparation services, it may make sense to structure the procurement to include the cost of the food itself.

Schedule for performance. You must specify when you require each supply or service. For example, will all supplies be delivered at once, or within three days of any properly executed order during the term of the contract? On what date must the supplier commence deliveries? What are the due dates of the "deliverables" from the consultant? How frequently must a recurring service be performed? The exact schedule -- or an

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[16]The only exceptions to this rule are contracts for the purchase of gasoline, fuel oil, or road salt. [G.L. c.30B, §13].

approximate schedule, with a statement that it is subject to minor adjustment -- should be included in the purchase description.

Delivery terms. You should specify the delivery terms. Must the supplier deliver the supplies or will you pick them up? Where must the supplies be delivered? To whom must the consultant submit "deliverables"? At what location in your jurisdiction must a service be performed?

Step 7: Develop the evaluation criteria.

You must communicate to vendors, in reasonable detail, the standards you will apply to the bids or proposals you receive. The evaluation criteria define these standards. If you are unsure about whether to solicit bids or proposals, defining the evaluation criteria you plan to use will assist you in making this decision. Throughout this manual, you will see references to two types of evaluation criteria: minimum evaluation criteria and comparative evaluation criteria. These are discussed below.

Minimum evaluation criteria (bids or proposals). Minimum criteria are yes-or-no standards. Does the bidder or proposer meet each minimum criterion? If the answer is yes, the bid or proposal remains under consideration. If the answer is no, you must reject the bid or proposal.

Minimum criteria are used to evaluate whether a bid or proposal is "responsive" and to identify "responsible" bidders or proposers. A "responsive" bid or proposal is one which contains all of the forms and information and offers all of the supplies or services requested in the IFB or RFP. A "responsible" bidder or proposer has the capability, integrity, and reliability to perform under the contract.

Responsiveness. This is the most important test to be applied to any bid or proposal: is it responsive? That is, has the vendor submitted all of the material you required, and does the supply or service meet the minimum demands you stated in the IFB or RFP? If the IFB stated that a bidder must submit a bid bond, and Bidder A failed to do so, Bidder A's bid is nonresponsive and should be rejected. If the RFP stated that the proposal must identify a project director with at least five years of experience, and Proposer X proposes someone with three years of experience, the proposal is nonresponsive.

Responsibility. You may require a bidder or proposer to attest to some minimum measure of responsibility -- for example, that the firm has been providing the supply or service for a minimum number of years, or that the firm is not currently bankrupt or considering filing for bankruptcy. "Responsibility" may also be examined, in the bid process, when the apparent low bidder has been identified. For example, you may use references to ascertain whether the apparent low bidder has a documentable record of nonperformance which would warrant rejection of the bid.

Remember that imposing unimportant or unnecessarily restrictive standards on prospective bidders or proposers will serve to reduce competition for the contract. On the other hand, if a standard or requirement is truly important, don't hesitate to specify it as a minimum criterion. You have the right and obligation to ensure that only qualified vendors are awarded public contracts.

For bids, you are required to select the responsive and responsible bidder submitting the lowest price. Only the bid submission requirements and minimum criteria are used. For proposals, the responsive and responsible proposers move on to

the next stage of the evaluation process. In this next stage, evaluators apply the comparative evaluation criteria set forth in your RFP to those remaining proposals meeting the submission requirements and minimum criteria.

Comparative evaluation criteria (proposals only). Comparative evaluation criteria are used only in evaluating proposals. These criteria allow you to compare the relative merits, or quality, of the responsive proposals. In deciding whether to use bids or proposals for a given procurement, you must first decide whether or not you truly need to use comparative criteria in selecting the vendor. In making this decision, you may find it helpful to consider the following questions when you are drafting your solicitation:

-- Are my minimum criteria sufficiently rigorous? If you might be reluctant to award the contract to a vendor meeting your minimum criteria, you probably need to toughen up these yes-or-no standards. For example, don't specify that the lead consultant for a service contract must have a minimum of one year of directly related experience if you are convinced that only a consultant with five years of directly related experience could satisfactorily fulfill the tasks you plan to contract for; place the minimum requirement at five years.

-- Are there attributes -- beyond the minimum standards -- which would be worth a higher investment of public funds? For example, is a consultant with eight or ten years of directly related experience more valuable on this particular contract than a consultant with the minimum of five years of experience? If not, the five-year minimum criterion is adequate. However, if you would be willing to pay more for a more experienced consultant, it is appropriate to consider experience both as a minimum criterion and as a comparative criterion.

-- Conversely, are there attributes -- beyond the minimum standards -- which I consider acceptable but risky? If you believe that a consultant with three years of directly related experience would be able to do the job, but would not perform as well as a consultant with five years of experience, you might still be willing to award the contract to the consultant with three years of experience if the contract offered a significant price break. In

this case, it is appropriate to consider experience both as a minimum criterion and as a comparative criterion.

In an RFP process, use the proposal requirements and minimum criteria to identify the responsive proposals submitted by responsible proposers. Then evaluate these proposals on the basis of the comparative criteria contained in the RFP. Chapter 30B sets forth a procedure for rating the proposals; this procedure is discussed in detail in Chapter Six.

Bid or proposal price. In preparing an IFB or RFP, you must tell vendors how you will determine the best bid or proposal price. For contracts under which your jurisdiction will have to pay the selected vendor, the best price is the lowest price; for contracts under which the selected vendor will have to make a payment to your jurisdiction, the best price is the highest price.

If you solicit a single price for supplies or services for a single-year contract, the determination of the best price is a simple matter of directly comparing the price submissions. However, there are other situations in which determining the best price is more complicated. For example, if you solicit prices for a variety of supplies or services, you must state in advance whether you will award a single contract to the bidder or proposer offering the best aggregate price, or whether you will award multiple contracts, one to each bidder or proposer offering a best price for each supply or service.

If you are awarding a multi-year contract (including any contract with provisions for renewal, extension, or other options), you must specify in the IFB or RFP how you will evaluate the bid or proposal price in the aggregate. For information on this and other requirements pertaining to multi-year contracts, see Chapter Three of this manual.

May I interview the competing vendors? As a general rule, you should avoid interviews or oral presentations. The information contained in the proposals you receive in response to an RFP should be sufficiently detailed to enable you to make informed judgments as to the relative capabilities, integrity, and reliability of the competing proposers. Assessments made on the basis of interviews and oral presentations can be misleading. For example, firms may send their marketing professionals to make presentations, but these individuals may not work for you under the contract. Your evaluation of their presentation skills is therefore irrelevant to the selection of those who will perform the contract.

There are a few narrow exceptions to the rule. For example, in evaluating vendors to provide training services, a vendor's ability to "perform" may be relevant. In this case, it may be appropriate to include in your comparative criteria standards such as "clarity of oral presentation" and "clarity of visual aids." In that case, you might require competing vendors to present a mock training session to those on your staff assigned to evaluate proposals. If you do require competing vendors to make presentations, be certain to include a requirement that the presenter(s) be the individuals(s) who will provide services under the contract.

May I ask bidders or proposers to demonstrate that they understand what I require? Evaluation criteria such as "demonstrated understanding of the services required" are inappropriate and should not be used. If you feel you must rely on bidders or proposers to demonstrate that they understand what you are requiring, your purchase description is inadequate and needs to be revised. No

procurement should require vendors to guess at what you want. Any system that relies on such guesswork is unfair, open to favoritism, and susceptible to insider information.

Step 8: Select the procurement method: bids or proposals.

Chapter 30B allows the use of two methods in contracting for supplies or services worth $10,000 or more: competitive sealed bids or competitive sealed proposals. However, you may solicit competitive sealed proposals only if your jurisdiction has appointed a CPO. The CPO -- or someone delegated by the CPO to solicit proposals -- must authorize the use of competitive sealed proposals. (Procedures for appointing a CPO and delegating the CPO's powers and duties are discussed in Chapter Two of this manual.)

By experience and habit, many public officials tend to assume that bids are most appropriate for procuring supplies and that proposals should be requested when procuring services. Chapter 30B draws no such mechanical distinction; it encourages thoughtful decisions based on the specific requirements of each procurement.

For any procurement, you should give careful consideration to using bids. Like most supply contracts, many -- if not most -- service contracts can be procured efficiently and effectively through bidding. Whether you are seeking snow removal services, liability insurance coverage, or building management services, the bid process can work for you. If you have developed an accurate, detailed purchase description, along with appropriately rigorous minimum criteria with which to screen prospective bidders, the bid process will yield a group of responsive bids submitted by responsible bidders. You need only select the bid offering the best price.

Chapter 30B presumes that bids will be appropriate in most cases. Accordingly, if you decide to request proposals instead of bids, the statute requires you to justify your decision in writing. (Chapter Six of this manual contains a step-by-step guide to requesting proposals.)

Step 9: Prepare the bid or proposal submission requirements.

In general, submission requirements are mechanical, "paperwork" requirements, such as bid bonds, certifications, transmittal letters, warranty information, references, and so forth. A bid or proposal which fails to meet the submission requirements set forth in the IFB or RFP should, in most cases, be rejected as nonresponsive.[17] For example, if your IFB requires that a bid bond for a certain amount be included with each bid, you must reject as nonresponsive any bid submitted without a bid bond. If you request bids on laser printers, you must reject any bid which provided prices on dot-matrix printers. If your RFP requires proposers to respond to a series of questions, you must reject as nonresponsive any proposal which failed to include the answers to the questions in the RFP.

For an RFP, the submission requirements must include a provision for separate submission of price and non-price proposals. If a proposer combines the proposals in one submission, you must reject the proposal as nonresponsive.

The IFB or RFP must specify when (date and time) and where sealed bids must be delivered, and the maximum amount of time your jurisdiction reserves to award a contract. You should

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[17]Chapter 30B does require you to waive, or allow the bidder or proposer to correct, minor informalities. See Chapters Five and Six of this manual for further discussion of submission requirements.

provide instructions on how to mark, correct, modify, or withdraw bids or proposals.

Any other relevant requirements should also be included. For example, each bidder or proposer must certify that the bid or proposal was made in good faith and without collusion or fraud. [G.L. c.30B, §10]. (A standard certification form is provided in Appendix A at the end of this manual.) Typically, bidders or proposers are required to complete standard forms: for example, in bidding a number of supply items, you should provide a standard bid form listing each bid item and the quantity you require, and leaving spaces for bidders to insert a unit price and total price for each item. (These standard forms must be included in the IFB or RFP document.) If you incorporate documents by reference into the IFB or RFP, you must specify where the documents may be obtained.

How much time should I reserve to award the contract? The answer depends on how long it will take you to evaluate the bids or proposals you receive. For example, if you must test a product to ensure that it is responsive to the IFB, you will have to allow sufficient time to obtain the test results. In addition, you should consider the schedule of other officials who must act on the award. Keep in mind that you may not award a contract after the time for acceptance has expired unless all the bidders or proposers agree to an extension of the time. It is not sufficient for you and the bidder or proposer offering the best price to agree to an extension. Because the bidders or proposers will know who submitted the best price, they will often be unwilling to agree to an extension; they may

prefer that you reissue the IFB or RFP and give them a second chance.[18]

May I require vendors to submit bid deposits or bonds? Yes. A bid deposit or bond is useful in ensuring either that the bidder or proposer offering the best price does not withdraw from the process after bids are opened, or, if the bidder or proposer does withdraw, that you will receive appropriate compensation. However, in some cases, especially those involving smaller procurements, vendors may not be interested in posting a bond, and competition may be limited if you require a bond. If you choose to require a bid deposit or bond, you must state in the IFB or RFP the amount required (usually stated as a percentage of the bid or proposal price) and the acceptable form (usually a certified check, bank treasurer's or cashier's check, cash, or a bond issued by a surety company licensed by the State Division of Insurance).

May I require the successful bidder or proposer to furnish a performance bond? Yes. A performance bond protects your jurisdiction from deficient work or default under a contract.[19] If you choose to require one, you should state in the IFB or RFP that contract execution will be conditioned upon producing a bond, issued by a surety company licensed by the State Division of Insurance, in the amount specified (e.g., 50 per cent of the amount of

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[18]If, after you have issued the IFB but before bids are due, it becomes apparent that you will need more time to make an award, amend the IFB to extend the time for acceptance. (IFB amendments are discussed under Step 5 in this chapter.) If you expect an indefinite delay, it may be best to cancel the IFB and reissue it later.

[19]You may wish to accept an irrevocable letter of credit in lieu of a bond. Consult with your attorney regarding the suitability and acceptable terms of this device.

the contract). As with bid bonds, in some cases, especially those involving smaller procurements, vendors may not be interested in posting a bond, and competition may be limited if you require a bond.

May I require the bidder or proposer to furnish references? Yes. If you plan to verify information about a proposer's work for other jurisdictions or clients as part of the proposal evaluation process, the proposal submission requirements should include reference information -- e.g., client names, contact persons, telephone numbers, project descriptions, and contract amounts.

Step 10: Develop the contract terms and conditions.

You must develop the contract terms and conditions prior to issuing the IFB or RFP. You may not leave the terms open for negotiation. It is best to provide interested vendors with a copy of the contract which the successful bidder or proposer will be required to sign.

The contract should be written by, or in consultation with, your attorney. The amount of detail in the contract will depend, at least in part, upon the size and nature of the procurement. In preparing the contract, you may find the following checklist useful:

-- Identify the parties to the contract and the responsible parties to receive any notices under the contract.

-- Incorporate by reference the selected vendor's bid or proposal.

-- Incorporate by reference the purchase description.

-- Specify the term of the contract including any renewal, extension, or other options. If there are any options, specify that they may be exercised by your jurisdiction at

its sole discretion, and how and when the options may be exercised.

-- Identify the payment terms, including when payments will be made, and what documents must be submitted for payment.

-- Specify that payment is subject to appropriation or other availability of funds (e.g., State or Federal grants).

-- Specify remedies for default (e.g., liquidated damages).

-- Specify the contractor's responsibility for providing liability insurance.

-- Specify the contractor's responsibility for providing bonding (e.g., a performance bond).

-- Specify that all contract amendments must be in writing and signed by officials with authority to bind the awarding authority.[20]

-- Specify what constitutes cause to terminate the contract, what, if any, notice must be provided prior to termination, and what, if any, opportunity must be granted to correct any problem.

-- Prohibit any activity that would constitute a violation of the conflict of interest statute (G.L. c.268A).

-- Prohibit the assignment of any interest in the contract.

-- Include a certification of tax compliance by the vendor (G.L. c.62C, §49A).

-- Specify that the document is the entire contract, and that there are no agreements other than those incorporated therein.

The following chapters provide step-by-step guidance on using bids and proposals to procure supplies and services.

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[20]Note that contract amendments are strictly limited under Chapter 30B. See Chapter Three of this manual for further discussion of contract amendments.

CHAPTER FIVE

THE BIDDING PROCESS FOR SUPPLIES AND SERVICES: A STEP-BY-STEP GUIDE

When you use bids to award a contract, you purchase supplies or services from the responsive and responsible bidder who offers you the best price. Under Chapter 30B, you must use competitive sealed bids to procure supplies and services with a value of $10,000 or more unless your jurisdiction has appointed a Chief Procurement Officer (CPO), and the CPO -- or an individual to whom the CPO has delegated powers and duties -- has determined that competitive sealed proposals should be used. The other exception to bidding is the existence of an emergency.[21] Jurisdictions may set the dollar threshold for competitive bidding lower, but not higher, than the $10,000 threshold of Chapter 30B. If you have any question about the bidding threshold in your jurisdiction, check with your attorney.

Who may use bids to procure supplies and services? Anyone authorized by statute, charter or bylaw, anyone with duly delegated authority, and any member of a board, committee, commission or other body whose official responsibilities require them to take part in a procurement may solicit bids. [G.L. c.30B, §2.] Note, however, that if your jurisdiction has chosen to appoint a CPO, only those individuals who have been delegated appropriate powers and duties by the CPO may undertake procurements. If you have questions about who is authorized to undertake a procurement within your jurisdiction, consult with your CPO (if you have one) or attorney.

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[21]Chapter Six of this manual sets forth procedures for undertaking a request for proposals process; Chapter Seven discusses emergency procurements.

Before embarking on a procurement by bids, you should determine precisely what you need, decide whether to use contracts available through the State Purchasing Agent, decide whether you might benefit from a cooperative agreement with other jurisdictions, and combine like items in one bid package to take advantage of volume purchasing and avoid bid-splitting. These planning issues are discussed in Chapter Four of this manual.

Step 1: Develop the purchase description.

A good description of the supplies or services you intend to purchase is essential to a successful procurement. A purchase description typically includes detailed specification of supplies, including any drawings, a detailed scope of services, or both. It also includes estimated quantities, a schedule for performance, and the delivery terms. Chapter Four of this manual provides information on developing a purchase description.

Step 2: Define the evaluation criteria.

Just as important as the description of what you intend to purchase are the criteria that you will use to evaluate the bids you receive. In a bidding process, you are interested in the vendor who offers the best price and meets all minimum criteria -- that is, criteria which are, in effect, checklist questions to which the answers are either "yes" or "no." You are not concerned with whether a bidder is good, better, or best; you are only concerned with which bidder among acceptable bidders offers you the best price. For example, in buying tires, you want to identify which bidder meets the minimum standard you specified (perhaps a U.S. Department of Transportation tire rating) in the purchase description, and

offers the best price. Similarly, in buying a service, you may want to identify the bidder who has a specified minimum amount of relevant experience, staff, and financial capacity to perform the work, and who offers the best price. (If the degree to which a vendor exceeds minimum requirements is truly important, you should use proposals instead of bids. You may wish to review Chapter Four of this manual to help you decide between bids and proposals.)

The evaluation criteria for bids are measures of responsiveness (whether the bidder promises to provide the supply or service you specified and whether the bid contains all required documents and forms properly completed), responsibility (whether the bidder has the skill, ability, and integrity to perform under the contract), and best price. Often, determining responsiveness, responsibility, and best price will be simple matters, and a statement in the invitation for bids (IFB) that you will award the contract to the responsible and responsive bidder who offers the best price will be sufficient. In other cases, more evaluation may be required, and the IFB must specify the criteria you will use. For example:

-- If you plan to test products offered by bidders, you must specify the standards you will use to determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose.

-- If you require separate bid prices for a number of items, you must indicate whether you will award one contract to the bidder offering the lowest aggregate price for all the items, or award a contract to each bidder offering the lowest price for each item.

-- If you require bid prices for each year of a multi-year contract, you must specify how you will determine which bidder's price is best. (For a discussion on comparing prices for multi-year contracts, see Chapter Three of this manual.)

-- If you plan to check references to ensure that the vendor has the minimum experience required, you must indicate that you will confirm claims of past experience.

Remember that you will only be able to evaluate the bids you receive against the evaluation criteria that you identify in the IFB. Chapter Four of this manual contains more information on developing evaluation criteria.

Step 3: Prepare the bid submission requirements.

The IFB must specify when (date and time) and where sealed bids must be delivered, and the maximum amount of time your jurisdiction reserves to award a bid. You should also provide instructions on how to mark bid packages and how to correct, modify, or withdraw bids. Any other relevant requirements should also be included: for example, each bidder must certify that the bid was made in good faith and without collusion or fraud. [G.L. c.30B, §10]. (A standard certification form is provided in Appendix A at the end of this manual.) Typically, bidders are required to complete standard forms. In bidding a number of supply items, for example, you should provide a standard bid form listing each bid item and the quantity you require, and leaving spaces for the bidder to insert a unit price and total price for each item. These standard forms must be included in the IFB document. If you incorporate documents by reference into the IFB, you must specify where bidders may obtain the documents. See Chapter Four of this manual for more information on bid submission requirements.

Step 4: Define the contract terms and conditions.

You must identify the contract terms and conditions prior to advertising for bids; you may not leave the terms and conditions open for negotiation. It is best to provide to interested vendors a copy of the contract which the successful

bidder will be required to sign. This will avoid any question about the content of the contract and, because all bidders will have committed to signing it, the contract execution should be a formality that can be accomplished quickly.

The contract should be written by, or in consultation with, your attorney. Chapter Four provides more detail on developing contract terms and conditions.

Step 5: Prepare the invitation for bids (IFB).

The IFB provides vendors with the information necessary to prepare and submit a responsive bid. An IFB consists of the following major components:

1. Purchase description.
2. Bid submission requirements.
3. Evaluation criteria.
4. Documents incorporated by reference.
5. Contract terms and conditions.
6. Standard forms.

May I amend an IFB after it has been issued? Yes. If an amendment is necessary, be sure to include the amendment with any IFB package you give out, and send the amendment to anyone who has already received the package. If the amendment cannot be distributed in time to reasonably allow bidders to submit responsive bids, it is best to extend the bid due date or to cancel the procurement and issue a new IFB.

Step 6: Provide public notice of the IFB.

Public notice of an IFB must be given a "reasonable time prior to the date for the opening of bids." [G.L. c.30B, §5(c)]. The

minimum amount of time that must be given is two weeks, because the notice must be published at least two weeks before bids are due. Otherwise, what is "reasonable" depends on the nature of the bid. The more complex a bid, or the more items included in the bid, the more time vendors may need to compile their bids. Availability of qualified vendors may also affect the bidding schedule. If you will need to search for and encourage bidders, you may need to allow extra time.

Remember that you must balance pressures within your jurisdiction to award a contract quickly against the need to maximize competition. In some cases, shorter periods of time favor a vendor who has held the contract in the past, regardless of whether others may be able to offer a better price.

The public notice must contain the following information:

1. A statement of where, when, and for how long IFBs may be obtained;

2. A description of the supply or service desired (e.g., a summary of the detailed purchase description included in the IFB);

3. A notice that your jurisdiction reserves the right to reject any or all bids; and

4. The identification of any board, committee, commission or other body which must approve the contract.

You may include other information in the notice. For example, if you have decided to establish a charge for copies of the IFB, you should disclose the amount of the charge and the form in which it may be paid.

<u>You must post the notice</u>. The notice must be posted until the time specified in the IFB for receipt of bids (a minimum of two weeks). It must be posted in a conspicuous place, in or near

your governmental body's offices. If your jurisdiction has an official bulletin board, that is where the notice should be posted.

You must publish the notice. The notice must be published at least once, not less than two weeks prior to the time specified for the receipt of bids, in at least one newspaper of general circulation within the area served by your jurisdiction.[22] You may, of course, publish the notice in more than one newspaper in your area, in newspapers outside your area, and more than once. You may wish to do additional advertising for a major or specialized procurement.

If the contract value will be $100,000 or more, you must also publish a notice in the Goods and Services Bulletin published by the Office of the State Secretary.[23]

> May I contact vendors to let them know about the IFB? Yes. If you maintain bidders' lists for contracts, you should send a copy of the notice or the IFB to those vendors on the list who might be interested in the particular contract. You may also simply call vendors to encourage bids. However, be careful to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert only selected vendors of an upcoming procurement in advance of the public notice.

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[22]The law provides one exception for publication in newspapers. If the State Secretary has granted a city or town permission to publish a periodical listing municipal contract opportunities, that city or town may publish its notices in such periodical instead of in a newspaper, subject to any limitations set by the State Secretary. [G.L. c.30B, §5.]

[23]You may mail the text of your newspaper advertisement to the Goods and Services Bulletin, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108. There is no charge for advertising in the Bulletin.

Step 7: Distribute the IFB.

The IFB must be made available on an equal basis to all who request a copy. If you maintain bidders' lists, you may provide interested vendors with a copy of the IFB.

A record should be kept of who received the documents. If it becomes necessary to issue an addendum to the IFB, the addendum should be sent to all those who have already received the IFB. Also, to avoid misunderstandings or protests, you should include in the IFB a requirement that vendors acknowledge in writing their receipt of any addenda.

> May I charge vendors for copies of the IFB? Yes. But keep in mind that the IFB must be made available to all persons on an equal basis, so the same charge must apply to everyone. In deciding whether or not to establish a fee for the IFB, consider the dampening effect a fee may have on competition.

Step 8: Receive sealed bids.

Be prepared to accept sealed bids after you issue the IFB. It is a good idea to keep a register of bids received, to note on the sealed bid package the date and time it was received, and to provide the bidders with receipts for the package upon request.

Bids must be unconditional.[24] However, prior to the bid opening, bidders may correct, modify or withdraw their bids by following the instructions you provided in the IFB. A bidder who wishes to withdraw a bid must make the request in writing. Any correction or modification to a bid must be submitted in writing. Because the original document must be submitted as a sealed package, you should include in the IFB a requirement that corrections or modifications also be sealed when submitted.

What if I receive a bid after the deadline specified in the IFB? You may not accept a late bid. If you do receive a late bid, you should note the time of receipt and return the bid package unopened to the bidder, along with an explanation of the reason for rejection.

What if I receive the original bid by the deadline, but I receive a correction or modification to the same bid after the deadline? You may not accept a late correction or modification. If you do receive a late correction or modification, you should treat it as a late bid and evaluate only the original bid which was received by the deadline.

Step 9: Open and record the bids.

Bids must be opened in public. Under Chapter 30B, to be a public bid opening, bids must be opened either in a meeting which fulfills the requirements of the State's Open Meeting Law

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[24]For example: a bidder may not submit a bid subject to your agreement to a change in the specifications, a bidder may not make a bid price subject to any changes in a price list, and you may not impose any conditions on a bid that were not specified in the IFB.

[G.L. c.30A, §11A½], or in the presence of one or more witnesses.

If the bids are opened in an open meeting, a quorum of the body holding the meeting must be present, and the names of all bidders and the amounts of their bids must be entered into the minutes.[25]

If the bids are opened in the presence of one or more witnesses, the procurement officer and the designated witness(es) must sign a statement under penalties of perjury listing the names of all bidders and the amounts of their bids, and declaring that the list is a complete and accurate list of the bids opened in your presence.

> May a bidder change a bid after it has been opened? A bidder may not change the price or any other provision of the bid in a manner prejudicial to the interests of your jurisdiction or fair competition. This is a very restrictive standard.
>
> May a bidder withdraw a bid after it has been opened? A bid may be withdrawn after it has been opened only if a mistake is clearly evident on the face of a bid document, but the intended correct answer is not evident. For example, a bidder might make a number of arithmetic errors -- incorrectly multiplying unit prices by estimated quantities, then adding the incorrect subtotals to arrive

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[25]If, in the IFB, you solicited bid prices for a series of items, such as office supplies, and you plan to award a separate contract to the lowest bidder for each item, you need not transcribe each bidder's prices for all items onto the signed statement. Instead, you may copy the pages of each bid submission containing the bid prices, attach them to the signed statement, and incorporate them by reference in the signed statem

at a total price. The mistake would be evident, but the intended bid would not.[26]

Step 10: Evaluate the bids.

You must evaluate bids using only the criteria identified in the IFB. The evaluation will address the responsiveness of the bid, the responsibility of the bidder, and the price. In many cases, this will require little more than using checklists to confirm that all required information and forms have been submitted, and making direct comparisons of costs.

In determining the responsiveness of a bid, you must waive minor informalities or allow the bidder to correct them. According to Chapter 30B, minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the bid . . . which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body." [G.L. c.30B, §2]. For example, the omission of a unit price figure is a minor deviation which must be waived if the intended figure is readily ascertainable from other figures in the bid.

You must correct a bid if a mistake and the intended bid are clearly evident on the face of the bid document. For example, a bidder might mistakenly insert the same figure ($1000) both as a unit price per square yard of carpeting and as a total price for 100 square yards. One of the figures is mistaken, and it is evident in this example that the unit price should be

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[26]Note that in such a case, if the bidder chooses not to withdraw the bid, you have the discretion to either reject the bid as nonresponsive -- the forms were not properly completed -- or to accept the bid and evaluate it as you stated you would in the IFB. You must not change the bid since the intended correct information is not apparent on the face of the document.

$10.00. In such a case, you must make the correction and notify the bidder in writing; the bidder must not be permitted to withdraw. Other than to make such a correction, you may not correct or change a bid.

May I evaluate the responsiveness and responsibility of only the bidder offering the best price? Yes; in fact, this is often an efficient approach to the bidding process. First, evaluate the prices submitted to determine the apparent best bid. Then evaluate the responsiveness and responsibility of the vendor who offered the best price. If you determine that the vendor is either not responsive or not responsible, proceed to evaluate the vendor who offered the next best price. In some cases, however, it may be more efficient to first evaluate the responsiveness and responsibility of vendors before comparing prices. This would be the case, for example, where price evaluations may be complex and time-consuming; you can limit your price evaluations to those bidders whom you have already determined are responsive and responsible.

What if I receive tied best bid prices from responsive and responsible bidders? This is a rare occurrence. If this does happen, you should follow your jurisdiction's written procedures, if any, for making a selection in the case of a tie.[27] If your jurisdiction lacks written procedures for dealing with a tied bid, you may make a random choice between the tied bidders -- for example, by flipping a coin or selecting a slip of paper from a hat. Be sure to

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[27]For example, such procedures might specify that the award will be made to the bidder providing supplies produced or manufactured within the Commonwealth of Massachusetts or within your jurisdiction, or to the bidder previously awarded the same contract.

perform this procedure in the presence of the tied bidders.

Step 11: Award the contract.

The contract must be awarded to the responsible and responsive bidder who offers the best price for the supply or service bid. Where the contract will require your jurisdiction to pay the contractor, the best price is the lowest price. Where the contract will require the contractor to pay your jurisdiction, the best price is the highest price.

Written notice of the award decision must be given to the selected bidder within the time for acceptance you specified in the IFB. The time for acceptance may only be extended when all the bidders agree to the extension.[28]

Who may award the contract? The answer depends upon who has the authority under statute, charter, ordinance or bylaw. If your jurisdiction has a CPO, the CPO -- or someone delegated by the CPO -- should sign contracts. But the CPO's signature is not sufficient if other officials are required by State law or local rule to approve contracts. For example, the award of a contract may be subject to the approval of the mayor, the city council, the board of selectmen, or the school committee. If you are uncertain, check with your attorney.

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[28]Note that it is not enough under the statute for you and the apparent best bidder to agree to an extension: all bidders must agree. In most cases other bidders are unlikely to agree, since they will know who offered the best price. This is why it is important to allow in the IFB enough time to make an award. If you discover as you approach the bid opening date that you may need more time to make an award than you had planned, amend the IFB to give yourself adequate time. (See the discussion of amendments under Step 5 in this chapter.)

Am I required to award the contract? No. You may cancel the IFB at any time until the bids are opened. Once bids are opened, you may reject all the bids any time before an award is made. You may cancel the IFB or reject the bids if you determine that such action is in the best interest of your jurisdiction. You must, however, state in writing the reason for any cancellation or rejection.

Step 12: Execute the contract.

Following notification of the award to the successful bidder, you must execute a written contract containing all the terms and conditions stated in the IFB.

What if the bidder awarded the contract refuses to execute the contract or wants to change the terms and conditions? You may not change the terms and conditions of the contract. If the successful bidder refuses to sign the contract, you may award the contract to the responsible and responsive bidder who offered the next best price only if the time for acceptance specified in the IFB has not expired. You may, of course, reissue the IFB. In addition, you should discuss with your attorney what action should be taken against the recalcitrant bidder. If the bidder posted a bid bond, you may be able to collect against the bond; otherwise, you may want to sue for any damages.

Can I amend the contract at a later date? Chapter 30B sets strict limits on contract amendments. These provisions, and recent judicial decisions, are discussed in Chapter Three of this manual.

Step 13: Retain records of the IFB process.

A file of all written documents required by Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. These documents include the following:

-- The invitation for bids, including any amendments.

-- The justification (if any) for use of proprietary specifications.

-- The public notice and advertisement.

-- The Goods and Services Bulletin notice, if different from the advertisement.

-- The record of the bid opening (either the minutes of the open meeting, the signed statement of the procurement officer and witnesses, or a certified copy of the minutes or signed statement).

-- All bids received, including the certified statement of each bidder that the bid was made in good faith.

-- Any bid corrections, modifications, withdrawals, and notices of bid corrections, modifications, or withdrawals.

-- Any notices of bid rejections or cancellation.

-- The notice of award.

-- The executed contract.

The contents of the bid file must be open to public inspection. [c.30B, §3.]

CHAPTER SIX

THE REQUEST FOR PROPOSALS PROCESS FOR SUPPLIES AND SERVICES: A STEP-BY-STEP GUIDE

Under Chapter 30B, bidding is the basic procurement method for contracts of $10,000 or more (with the exception of real property procurements). However, the request for proposals (RFP) process is available to you for procuring supplies or services costing $10,000 or more. Unlike the bidding process, which requires you to award the contract to the responsive and responsible bidder offering the best price, the RFP process permits you to weigh the relative merits of proposals submitted by competing offerors. You are required to award the contract to the offeror submitting the most advantageous proposal, taking into consideration the proposals' relative merits and relative prices. Unlike the bidding process, the RFP process may not always result in selection of the proposer offering the best price.

Should I solicit proposals for service contracts? While service contracts may seem at first glance to be most suited to the RFP process, you should first carefully consider the option of bidding such contracts. Like most supply contracts, many service contracts can and should be bid. Chapter Four of this manual provides guidance on deciding between bids and proposals and developing clear, targeted specifications for purchasing services through competitive sealed bids. It is recommended that you carefully review the discussion contained in Chapter Four before undertaking an RFP process.

Who may use proposals to procure supplies and services? Anyone authorized by statute, charter or bylaw, anyone with duly delegated authority, and any members of a board,

committee, commission or other body whose official responsibilities require them to take part in a procurement may solicit proposals. [G.L. c.30B, §2]. However, your jurisdiction must appoint a Chief Procurement Officer (CPO) in order to undertake an RFP process. (Chapter Two of this manual provides more information on appointing a CPO.) Moreover, only those individuals who have been delegated appropriate powers and duties by the CPO may undertake procurements. If you have questions about who is authorized to undertake a procurement within your jurisdiction, consult with your CPO or attorney.

Step 1: Document your decision to use the RFP process.

If you do decide that the RFP process is preferable for a given procurement, you must document your decision -- along with the reasons for it -- in writing. For example, in determining that the RFP process should be used to procure consultant services to assess a city's health coverage requirements, it would not be sufficient to state: "I have determined that the RFP process for this procurement will be most advantageous for the City." Your written rationale must specify the reasons for your determination that the procurement requires comparative judgments of factors in addition to price. For example, you might state that "the RFP process will enable the City to provide higher ratings to consultants whose key project personnel have more than the minimally adequate number of years of experience in providing comparable services to other Massachusetts cities and towns."

Step 2: Develop the purchase description.

A good description of the supplies or services you intend to purchase is essential to a successful procurement. A purchase

description typically includes detailed specifications of supplies, including any drawings; a detailed scope of services; or both. It also includes estimated quantities, a schedule for performance, and the delivery terms. Chapter Four provides information on developing a purchase description.

For complex procurements, Chapter 30B provides you with the option of requiring proposers to include a "plan of services" in their proposals. In essence, the plan of services will contain specific information -- to the level of detail you request -- about the proposer's internal operations or management systems which relate to fulfilling the contract. You will use the information in the plan of services as a tool to evaluate the proposer's ability to provide the supplies or services you have specified in the purchase description. For instance, if you are seeking proposals for the management and operation of a municipal facility, it might be appropriate to require each proposer to submit a plan of services containing a detailed organization chart showing the chain of command, written job descriptions for the key personnel who will be assigned to the contract, and a description of the automated systems the proposer will use to fulfill the reporting and record-keeping functions you have specified in the scope of services. If you require proposers to submit a plan of services, your purchase description must specify the information you want included in the plan. You may also specify a format and set limits on the length. Of course, you should gear your requirements for the plan of services to the nature of the contract.

> Can I present proposers with a problem and simply ask them to propose a solution to the problem in the plan of services? Absolutely not. This approach is not permitted under Chapter 30B. Requiring a plan of services does not exempt you from the need to develop a clear, detailed set

of specifications or scope of services describing the supplies or services you are procuring. The primary function of the plan of services is to enable you to evaluate proposers' ability to fulfill the terms of the contract.

Should I require a plan of services for all large RFP procurements? No. For many RFP procurements, both large and small, you can evaluate proposals adequately without requiring each proposer to submit a plan of services. However, this option is available to you for complex procurements in which you believe you need more information about the proposers' internal operations or management systems. If you don't need a plan of services from each proposer, don't complicate the RFP process unnecessarily by requiring one.

Step 3: Define the minimum evaluation criteria.

Minimum evaluation criteria reflect those standards or attributes which you consider essential to satisfactory performance of the contract. You will use the minimum criteria to identify "responsive" proposals (those containing all of the forms and information and offering all of the supplies or services requested in the RFP) and to identify "responsible" proposers (those with the capability, integrity, and reliability to perform under the contract).

Minimum criteria are yes-or-no standards which you will apply to every proposal. Does the proposer meet the minimum criterion? If the answer is yes, the proposal remains under consideration. If the answer is no, the proposal is eliminated from further consideration. If the nature of the work to be performed under the contract demands that the contractor possess a very high level of qualifications and training, then

you should set very rigorous threshold criteria. However, if you set a higher standard than you truly need, you will reduce the pool of qualified proposers and, in all likelihood, pay the selected proposer more than you should.

For example, in selecting a consultant to evaluate your jurisdiction's health coverage requirements, you might determine that only consultants who have successfully completed at least one contract providing health coverage consulting to a public client are qualified to submit proposals. If you include this criterion in the RFP, you must reject all proposals submitted by consultants who do not meet the standard -- since, by your own definition, such consultants are not qualified to perform the work. As this example illustrates, it is important that the minimum criteria truly reflect the standards or qualifications necessary to perform the work.

Step 4: Define the comparative evaluation criteria.

At this point in the RFP process, you have developed the proposal submission requirements and minimum criteria to identify the responsive proposals submitted by responsible proposers. (Later -- when you begin the evaluation process in step 13 -- proposals which meet these standards will move to your "short list."[29]) Now you need to define the "comparative evaluation criteria" to be applied to all proposals on the short list.

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[29]The actual number of proposers on your "short list" will depend upon several factors, including vendor interest in your contract and the rigorousness of your minimum criteria. It is not permissible, under Chapter 30B, to reject proposals simply for the sake of pruning the list down to an arbitrary, preordained number -- for example, five. If more than five proposals meet your advertised minimum criteria, all must be evaluated on the basis of your advertised comparative criteria.

Comparative evaluation criteria reflect those standards or attributes for which you would be willing to spend more money. You will use the four rating categories set forth in Chapter 30B -- "highly advantageous," "advantageous," "not advantageous," and "unacceptable" -- to evaluate each proposal on the short list for each comparative criterion. In defining the comparative criteria, make them as specific as possible, and tie them as closely as you can to the tasks contained in the scope of work. Avoid the use of vaguely worded phrases such as "past performance" or "creativity of approach," which provide little guidance either to those submitting proposals or to those responsible for evaluating the proposals.

A proposal which fully meets the evaluation standard you have specified should receive an "advantageous" rating for that criterion, and a proposal which fails to meet the standard specified should receive an "unacceptable" rating for that criterion. However, there are some circumstances under which it may be appropriate to pay more for supplies or services which excel on a particular comparative criterion. Under these circumstances, the "highly advantageous" rating should be assigned. The reverse is also true: there are some circumstances in which it may be appropriate to select a proposal which falls short of a specified goal for a comparative criterion -- but only if the proposal offers a significant price break to your jurisdiction. Under these circumstances, the rating of "not advantageous" should be assigned for that criterion.

In the municipal health coverage example cited in step 3, above, you determined that only consultants who had successfully completed one health coverage consulting contract for a public client would be qualified. Therefore, you incorporated this standard into the minimum criteria to be included in the RFP. Would you prefer that a consultant have

municipal health coverage consulting experience within Massachusetts? Would you pay more for such experience? If the answers to both questions are "yes," then "municipal heath coverage consulting experience within Massachusetts" would be an appropriate comparative criterion. Your RFP would then state that you will assign, on this criterion, a rating of "highly advantageous" to proposals from consultants with municipal health coverage consulting experience within Massachusetts.

To take another example: for a consultant contract to provide specialized staff training, you might require each proposer to submit three samples of workbooks or other training aids used in staff training similar to what you are seeking. Your comparative criteria could include "clarity and completeness of sample training materials" submitted by each proposer. You might decide that you would be willing to pay more to a consultant with a demonstrated ability to produce superior training materials -- that is, materials which contain useful graphics, which emphasize important points in eye-catching formats, and which are particularly well written.

The next step is to define the standards you will use in assigning a rating to each responsive proposal for the "clarity and completeness of sample training materials" criterion. The rating standards -- which you should articulate in the RFP -- might be the following:

-- If none of the training samples submitted by a proposer are clear and complete, the proposal will be rated "unacceptable" for this criterion. (If the proposer cannot show you even one example of good materials, there is no reason to hire that proposer to do your training.)

-- If one or two of the three training samples submitted by a proposer are unclear, incomplete, or both, the proposer will be rated "not advantageous" for that criterion. (The "not advantageous" rating is a shorthand way of saying

that the proposal entails some risk to your jurisdiction. In this example, since only some of the training samples meet your clarity/completeness standard, you have reason to doubt that the training materials this proposer produces for you will be better than the poorer samples, but you might take the risk if the price were low enough.

-- If all three of the training samples submitted by a proposer are written clearly and fully cover the relevant subject matter, they fully meet your standard for the "clarity and completeness" criterion; therefore, the proposal will be rated "advantageous" for this criterion.

-- If all three of the training samples submitted by a proposer are clear and complete, and also excel with respect to graphics, formats, and writing style, the proposal will be rated "highly advantageous." (The "highly advantageous" rating is a shorthand way of saying that you are willing to consider paying more for this proposal.)

Keep in mind that the lower the number of criteria on which you make comparative judgments, the easier your evaluation process will be. There is no need to multiply the evaluation criteria endlessly, or to make comparative ratings on all -- or even most -- evaluation criteria.

If, in developing the evaluation criteria for a specific procurement, you find that you have no need of comparative criteria -- i.e., that you plan to select the best offer from the pool of vendors meeting your proposal submission requirements and minimum criteria -- then the RFP process is inappropriate to the procurement. Instead, you can and should solicit competitive sealed bids in accordance with the procedures set forth in Chapter Five of this manual.

May I restrict the short list to three proposals? You may not specify in advance the number of proposals to which you will apply the comparative criteria. If a vendor has submitted a responsive proposal and met your minimum criteria, then -- by your own standards -- the proposer is

qualified to perform the contract. If ten vendors are qualified, then you must apply the comparative criteria to all ten proposals.

Chapter 30B bans evaluation of competing proposals on the basis of criteria not included in the RFP. Therefore, it is important to ensure that the evaluation criteria developed for the RFP reflect the full range of standards you plan to apply to the proposals you receive. The advantage of this approach is clear: you maximize the likelihood of receiving responsive proposals, geared to the needs of your jurisdiction. The more information you provide to proposers about the target at which their proposals are aimed, the greater the likelihood that their proposals will be "on target."

Step 5: Define the "best price" for this procurement.

The RFP must inform proposers of the method you will use to determine the "best" proposal price. For contracts under which your jurisdiction will have to pay the selected vendor, the best price is the lowest price; for contracts under which the selected vendor will have to make a payment to your jurisdiction, the best price is the highest price.

If you solicit a single price for supplies or services for a single-year contract, the determination of the best price is a simple matter of directly comparing the price submissions. However, there are other situations in which determining the best price is more complicated. For example, if you solicit prices for a variety of supplies or services, you must determine whether you will award a single contract to the bidder or proposer offering the best aggregate price, or whether you will award multiple contracts, one to each bidder or proposer offering a best price for any supply or service.

If you are awarding a multi-year contract (including any contract with provisions for renewal, extension, or purchase options), you should review the detailed discussion of price evaluation in Chapter Three of this manual.

Step 6: Define the proposal submission requirements.

In general, proposal submission requirements are mechanical, "paperwork" requirements, such as bid bonds, certifications, transmittal letters, warranty information, references, and so forth. A proposal which fails to meet the submission requirements set forth in the RFP should, in most cases, be rejected as nonresponsive.

Under Chapter 30B, you must require proposers to submit separate price and non-price (or technical) proposals. Procedures for opening and evaluating the price and non-price proposals are explained later in this chapter.

Step 7: Prepare the RFP.

The RFP contains all of the information proposers will need in order to prepare a responsive proposal. You must make copies of the RFP available on an equal basis to all who request the RFP. The information which the RFP must include is set forth in G.L. c.30B, §6(b). In general, an RFP should include the following major components:

1. Proposal submission requirements, including the time and date for receipt of proposals, the address of the office to which proposals are to be delivered, the maximum time for acceptance of the proposals by your jurisdiction, and the mandatory separate submission of price and non-price proposals.

2. Purchase description (including, if you are requiring the submission of a plan of services, a specification of the

information to be included in the plan, and any requirements as to format or length).

3. Minimum evaluation criteria.

4. Comparative evaluation criteria, accompanied by an explanation of how ratings will be assigned -- that is, what a proposer should offer in order to be rated "advantageous" on each criterion, and what more should be offered to earn a rating of "highly advantageous."

5. Your methodology for determining the best price.

6. Contract terms and conditions. (If you are requiring the submission of a plan of services, you should specify that the contract will incorporate by reference the approved plan of services submitted by the selected proposer.)

7. Standard forms.

May I incorporate documents by reference into the RFP? Yes. However, if you do so, you must specify in the RFP where prospective proposers may obtain these documents.

May I amend an RFP after it has been issued? Yes. If an amendment is necessary, be sure to include the amendment with any RFP package you give out, and send the amendment to anyone who has already received the package. If the amendment cannot be distributed in time to reasonably allow proposers to submit responsive proposals, it is best to extend the proposal due date or to cancel the procurement and issue a new RFP.

Step 8: Provide public notice of the RFP.

Public notice of an RFP must be given a "reasonable time prior to the date for the opening of [proposals]." [G.L. c.30B, §5(c)]. The minimum amount of time that must be given is two weeks, because the notice must be published at least two weeks before proposals are due. Otherwise, what is "reasonable" depends on the nature of the proposal: the more complex the

proposal, or the more items or services are included in the proposal, the more time vendors may need to prepare their proposals. Availability of qualified vendors may also affect the RFP schedule. If you will need to search for and encourage proposers, you should allow extra time.

Remember that you must balance pressures within your jurisdiction to award a contract quickly against the need to maximize competition. In some cases, shorter periods of time favor a vendor who has held the contract in the past, regardless of whether others may be able to offer a better price.

The public notice must contain the following information:

1. A statement of where, when, and for how long copies of the RFP may be obtained;

2. A description of the supply or service desired (e.g., a summary of the detailed purchase description included in the RFP);

3. A notice that your jurisdiction reserves the right to reject any or all proposals; and

4. An identification of any board, committee, commission or other body which must approve the contract.

You may include other information in the notice. For example, if you have decided to establish a charge for copies of the RFP, you should disclose the amount of the charge and the form in which it may be paid.

<u>You must post the notice</u>. The notice must be posted until the time specified in the RFP for receipt of proposals (a minimum of two weeks). It must be posted in a conspicuous place, in or near your jurisdiction's offices. If your jurisdiction has an official bulletin board, that is where the notice should be posted.

You must publish the notice. The notice must be published at least once, not less than two weeks prior to the time specified for the receipt of proposals, in at least one newspaper of general circulation within the area served by your jurisdiction.[30] You may, of course, publish the notice in more than one newspaper in your area, in newspapers outside your area, and more than once. You may wish to do additional advertising for a major or specialized procurement.

If the contract value will be $100,000 or more, you must also publish a notice in the Goods and Services Bulletin published by the Office of the State Secretary.[31]

> May I contact vendors to let them know about the RFP? Yes. If you maintain bidders' lists for contracts, you should send a copy of the notice or the RFP to those vendors on the list who might be interested in the particular contract. You may also simply call vendors to encourage proposals. However, be careful to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert only selected vendors of an upcoming procurement in advance of the public notice.

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[30]The law provides one exception for publication in newspapers. If the State Secretary has granted a city or town permission to publish a periodical listing municipal contract opportunities, that city or town may publish its notices in such periodical instead of in a newspaper, subject to any limitations set by the State Secretary. [G.L. c.30B, §5].

[31]You may mail the text of your newspaper advertisement to the Goods and Services Bulletin, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108. There is no charge for advertising in the Bulletin.

Step 9: Distribute the RFP.

The RFP must be made available on an equal basis to all who request a copy. A record should be kept of who received the documents. If it becomes necessary to issue an addendum to the RFP, the addendum should be sent to all those who have already received the RFP. Also, to avoid misunderstandings or protests, you may want to require vendors to acknowledge in writing their receipt of any addenda.

> May I charge vendors for copies of the RFP? Yes. But keep in mind that the RFP must be made available to all persons on an equal basis, so the same charge must apply to everyone. In considering whether to establish a fee for the RFP, consider that a fee may serve to dampen competition -- and therefore result in a higher-priced contract.

Step 10: Designate the individual(s) responsible for evaluating the proposals.

Chapter 30B requires the CPO to select one or more individuals responsible for evaluating the non-price, or technical, proposals.

Step 11: Receive sealed price and non-price proposals.

Be prepared to receive separate, sealed price and non-price proposals after you issue the RFP. You must maintain a register of proposals received. It is good practice to note on the sealed price and non-price proposal packages the date and time they were received, and to provide proposers with receipts for their proposals upon request.

Proposals must be unconditional.[32] However, prior to the proposal opening, proposers may correct, modify or withdraw their proposals by following the instructions you provided in the RFP. A proposer who wishes to withdraw a proposal must make the request in writing. Any correction or modification to a proposal must be submitted in writing. Because the original documents must be submitted as sealed packages, you should require in the RFP that corrections or modifications also be sealed when submitted.

What if I receive a proposal after the deadline specified in the RFP? You may not accept a late proposal. If you do receive a late proposal, you should note the time of receipt and return the proposal unopened to the proposer, along with an explanation of the reason for rejection.

What if I receive the original proposal by the deadline, but I receive a correction or modification to the same proposal after the deadline? You may not accept a late correction or modification. If you do receive a late correction or modification, you should treat it as a late proposal, and evaluate only the original proposal which was received by the deadline.

Step 12: Open and register the proposals.

The CPO may not open the proposals publicly. The proposal contents are to be kept confidential and not disclosed to competing proposers until the evaluation process is completed or until the time for acceptance specified in the RFP,

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[32]For example, a proposer may not submit a proposal subject to your agreement to a change in the specifications, a proposer may not make a proposal price subject to any changes, and you may not impose any conditions on a proposal that were not specified in the RFP.

whichever occurs first. You must separate the price and non-price proposals. The non-price, or technical, proposals must be opened at the time specified in the RFP in the presence of one or more witnesses. At the time of the opening, you must prepare and make available for public inspection a register of proposals which includes the name of each proposer and the number of proposal modifications submitted by each proposer. You should also record the names of the witness(es).

You may open the price proposals immediately after opening the technical proposals or at a later time. However, be sure that you do not disclose the price proposals to the evaluator(s) until the latter have completed their technical proposal evaluations. The separation of technical and price proposals is an important element of the RFP process. The process is structured to allow an orderly, fair comparison of the proposals.

Step 13: Screen the proposals for responsiveness and responsibility.

After opening the technical proposals, you should examine each proposal to determine whether it meets all of the proposal submission requirements and minimum criteria specified in the RFP. Any proposal which fails to include the information or documentation specified in the proposal submission requirements is nonresponsive and must be rejected. Any proposer who fails to meet any of the standards set forth as minimum criteria is nonresponsible and must be eliminated from the competition.

In determining the responsiveness of a proposal, you must waive minor informalities or allow the proposer to correct them. According to Chapter 30B, minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the [proposal] . . . which can be waived or

corrected without prejudice to other offerors, potential offerors, or the governmental body." [G.L. c.30B, §2]. For example, the omission of a unit price figure is a minor deviation which must be waived if the intended figure is readily ascertainable from other figures in the proposal.

You must correct a proposal if a mistake and the intended offer are clearly evident on the face of the proposal document. In such a case, you must make the correction and notify the proposer in writing; the proposer must not be permitted to withdraw. Other than to make such a correction, you may not correct or change a proposal.

Step 14: Evaluate the responsive proposals from responsible proposers using the comparative evaluation criteria contained in the RFP.

Responsive proposals from responsible proposers become your "short list" to be evaluated further. (As noted under Step 4, you may not arbitrarily restrict the number of proposals on the "short list.") The evaluator(s) designated in Step 10 must prepare written evaluations for each responsive proposal. As noted above, the evaluations must be based solely on the comparative evaluation criteria set forth in the RFP. The principles underlying the Chapter 30B evaluation procedures are fairness and accountability. In the discussion which follows, "you" refers to the evaluator or evaluators assigned to rate the competing proposals.

For each comparative evaluation criterion, you must assign a rating of "highly advantageous," "advantageous," "not advantageous," or "unacceptable" to each proposal. You must also assign a composite rating of "highly advantageous," "advantageous," "not advantageous," or "unacceptable" to each proposal. The record of the proposal evaluations must show the rating assigned for each evaluation criterion, the reasons for

each rating, the composite rating assigned to the proposal, and the reasons for the composite rating.[33]

The rating system required by Chapter 30B is intended to discourage jurisdictions from assigning numerical ratings to technical proposals. Point systems can be deceptive: they create the illusion that qualitative judgments can be compared with mathematical precision. On a numerical scale, a proposal with a 225-point score may appear superior to a proposal with a 220-point score. You might be hesitant to award the contract to the proposal receiving the lower score, even if it offers a significant price advantage. However, under Chapter 30B's non-numerical rating scheme, you may find that both proposals receive composite ratings of "advantageous." Having established that both proposals would meet your needs, you can then make a cost-conscious selection.

Using the rating categories. The RFP has set forth the comparative criteria to be used in evaluating responsive proposals from responsible proposers. You must now rate the responsive proposals for each criterion using the four rating categories: "highly advantageous," "advantageous," "not advantageous," and "unacceptable." Keep in mind that you will not know the proposers' prices at the time that you assign ratings to the technical proposals.

In the RFP, you have stated what each proposer must offer in order to be rated "advantageous" on each comparative criterion, and what more each proposer must offer to earn a rating of "highly advantageous." In assigning the ratings, you must

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[33]If you wish to recommend that revisions to the proposal's plan for providing the supplies or services be obtained by negotiation prior to awarding a contract to the proposer, such recommended revisions should also be part of the written explanations accompanying the ratings. Step 16 discusses the negotiation process.

follow the rules you have set forth in the RFP. If, for a specific comparative criterion, a proposal fully meets the standards you have set for the "advantageous" rating on a comparative criterion, you must assign the proposal a rating of "advantageous" for that criterion. If it fulfills the requirements you have set forth for the "highly advantageous" rating, you must assign it a rating of "highly advantageous."

Your written explanation accompanying each rating is the place to provide further information on the proposal characteristics. Is the proposal vastly superior to all others for this criterion, and therefore worth a substantial cost premium to your jurisdiction? Your written explanation accompanying the "highly advantageous" rating should describe the proposal attributes which make it superior to the others, and advise the CPO of the proposal's higher value to your jurisdiction relative to the others. Alternatively, is the proposal only marginally better than those receiving "advantageous" ratings for this criterion? Again, your written explanation should commmunicate this judgment to the CPO.

The more qualitative information you provide in the written explanations accompanying the proposal ratings, the better equipped the CPO will be to weigh the ratings you have assigned to the non-price proposals against the proposal prices in order to identify the most advantageous proposal for your jurisdiction.

> May I give higher ratings to proposals containing optional features? No. Using optional features as a means of awarding extra credit to proposers is improper: it gives the evaluators too much discretion while reducing the opportunity for fair, open competition.

May I give ratings conditioned on negotiating changes to the proposal? No. The rating must reflect the quality of the actual proposal before you. However, if you have required proposers to submit a plan of services, and if you determine that changes to a proposal's plan of services would change an "unacceptable" or "not advantageous" rating to "advantageous" or "highly advantageous," your written explanation accompanying the lower rating should specify the changes to the plan of services which would be necessary to achieve the higher rating. This information will be important to the CPO in identifying the most advantageous proposal at the end of the evaluation process. If the proposal cited above would be the most advantageous after the necessary changes were made to the plan of services, the CPO may attempt to negotiate these changes with the proposer prior to making the contract award. Note that only changes to the plan of services are negotiable. The RFP specifications, scope of services, contract terms, and price are non-negotiable under Chapter 30B.

Assigning composite ratings. After proposals have been assigned ratings on the basis of each evaluation criterion, evaluators should assign composite ratings to the proposals. The written explanation accompanying each composite rating must state the reasons for each composite rating.

If a proposal has received an "unacceptable" rating on any single criterion, the composite rating should also be "unacceptable."[34] That is to say, your rating of

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[34]If you have identified revisions to the proposal's plan of services which, if made, would change the "unacceptable" rating to "advantageous" or "highly advantageous," your written explanation accompanying the "unacceptable" rating should

(continued...)

"unacceptable" on any evaluation criterion you have established means exactly what it says: you will not accept the proposal. If your evaluation criterion is clear, and if you have clearly stated your standard for determining whether a proposal will be deemed unacceptable with respect to that criterion, the decision to assign a rating of "unacceptable" should be straightforward.

If a proposal has received one or more "not advantageous" ratings, it may be assigned a composite rating of "not advantageous." The written explanation accompanying the composite rating should point out the risks or disadvantages of selecting the proposal, so that the CPO -- who is responsible for making the final recommendation or selection -- will have a basis for balancing those risks with the proposal's cost advantage (if any). Similarly, the written explanation accompanying a proposal rated as "highly advantageous" should spell out the extra benefits offered by the proposal to provide the CPO with a basis for balancing the extra benefits with the proposal's cost premium (if any). Note that if a proposal has not received a "highly advantageous" rating on at least one evaluation criterion, you should not assign that proposal a composite rating of "highly advantageous."[35]

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[34](...continued)
specify the changes to the plan of services which would be necessary to achieve the higher rating.

[35]As before, if you have identified revisions to the proposal's plan of services which, if made, would change the "not advantageous" rating to "advantageous" or "highly advantageous," your written explanation accompanying the lower rating should specify the changes to the plan of services which would be necessary to achieve the higher rating.

Step 15: Identify the most advantageous proposal.

The CPO is responsible for making this decision -- often, in the form of a recommendation to the city council, the school commmittee, or another body -- taking into consideration the proposal evaluations and the proposal prices. In many cases, you will find that the lowest-priced proposal is most advantageous. For example, if all responsive and responsible proposals have received composite ratings of "advantageous," then the contract should clearly be awarded to the lowest-priced of these.

If one proposal has been rated as "highly advantageous," and has a higher price tag than the lowest-priced "advantageous" proposal, you need to determine which proposal best meets the needs of your jurisdiction.[36] It may be that the extra benefits afforded by the "highly advantageous" proposal are not worth the cost premium you will incur by selecting that proposal. There is no mechanical process for making the tradeoff. The essence of public decision-making is accountability: making a choice and articulating the reasons. This is what Chapter 30B requires.

Step 16: Negotiate changes to the plan of services (if any) with the proposer submitting the most advantageous proposal.

Chapter 30B permits you to condition the contract award on successful negotiation of revisions to the plan of service identified by the evaluators during the proposal evaluation phase of the process. The scope of these negotiations is

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[36]If revisions to a proposal's plan of service would result in its selection as most advantageous, taking into consideration the proposal evaluations and prices, you should select this proposal on a conditional basis, as described in the following step.

strictly limited. Only the plan of services is subject to negotiation; the RFP specifications, scope of services, contract terms, and price are non-negotiable. You may not agree to pay more than the proposal price, nor may you agree to indirect price adjustments: e.g., reductions in the scope of services, the vendor's responsibilities, or the quality of the product. Allowing a proposer to change the proposal price or any other RFP requirement after the proposals have been opened would be unfair to the other proposers, and would violate Chapter 30B.

If the RFP did not require proposers to submit a plan of services, or if the evaluators identified no required changes in the plan of services included in the proposal deemed "most advantageous" by the CPO, there is nothing to negotiate.

Step 17: Award the contract.

Written notice of the award decision must be given to the selected proposer within the time for acceptance you specified in the RFP. The time for acceptance may only be extended when all the proposers agree to the extension.[37]

If you do not award the contract to the proposer submitting the lowest price, you must prepare a written explanation of your reasons. For example:

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[37]Note that it is not enough under the statute for you and the selected proposer to agree to an extension: all proposers must agree. In most cases, other proposers are unlikely to agree. This is why it is important to ensure that the RFP allows enough time to make an award. If you discover as you approach the proposal opening date that you may need more time to make an award than you had planned, amend the RFP to give yourself adequate time. (See the discussion of amendments under Step 7 in this chapter.)

> The lowest-priced proposal received a a composite rating of "not advantageous" because the sample training materials were poorly written and lacked specific step-by-step instructions to guide those being trained. I have determined that the cost savings offered by this proposal do not compensate for the lower quality of this proposer's training materials in comparison with the training materials provided by other proposers. Therefore, I am awarding this contract to the lowest-priced proposal receiving a composite rating of "advantageous."

Similarly, a "highly advantageous" proposal may have a higher price than the "advantageous" proposals. If you award the contract to the "highly advantageous" proposal, your written explanation must specify in reasonable detail the basis for your determination that the quality of the supplies or services offered by the selected proposer will not exceed the actual needs of your jurisdiction.

In rare cases, contracts procured via the RFP process may involve payment of a monetary sum to your governmental entity -- for example, an auditorium management contract under which the management firm pays you a monthly fee and retains the auditorium revenues. If you award the contract to anyone other than the proposer submitting the highest price, you must explain in writing the reasons for the award.

If the contract does not include one or more of the proposal revisions to the plan of services recommended by the evaluators, the CPO must explain in writing the reasons for omitting the revision(s) from the plan of services incorporated by reference into the contract.

> Who may award the contract? The answer depends upon who has the authority under statute, charter, ordinance or bylaw. The CPO -- or someone delegated by the CPO -- should sign contracts. But the CPO's signature is not

sufficient if other officials are required by State law or local rule to approve contracts. For example, the award of a contract may be subject to the approval of the mayor, the city council, the board of selectmen, or the school committee. If you are uncertain, check with your attorney.

Am I required to award the contract? No. You may cancel the RFP at any time until the proposals are opened. Once proposals have been opened, you may reject all proposals at any time before an award is made. You may cancel the RFP or reject the proposals if you determine that such action is in the best interest of your jurisdiction. However, you must state in writing the reason for any cancellation or rejection.

Step 18: Execute the contract.

Following notification of the award to the successful proposer, you must execute a written contract containing all the terms and conditions stated in the RFP.

What if the proposer awarded the contract refuses to execute the contract or wants to change the terms and conditions? You may not change the terms and conditions of the contract. If the successful proposer refuses to sign the contract, you may award the contract to the next most advantageous proposer only if the time for acceptance specified in the RFP has not expired. You may, of course, reissue the RFP. In addition, you should discuss with your attorney what action should be taken against the recalcitrant proposer. If the proposer posted a bid bond, you may be able to collect against the bond; otherwise, you may want to sue for any damages.

Can I amend the contract at a later date? Chapter 30B sets strict limits on contract amendments. These provisions, and recent judicial decisions, are discussed in Chapter Three of this manual.

Step 19: Retain records of the RFP process.

A file of all written documents required by Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. These documents include the following:

-- The written rationale for the decision to use an RFP.

-- The RFP, including any amendments.

-- The justification (if any) for use of proprietary specifications.

-- The public notice and advertisement.

-- The Goods and Services Bulletin notice, if different from the advertisement.

-- The register of proposals.

-- All proposals received, including the certified statement of each proposer that the proposal was made in good faith.

-- Any proposal corrections, modifications, withdrawals, and notices of bid corrections, modifications, or withdrawals.

-- Any notices of proposal rejections or cancellation.

-- The individual and composite proposal ratings and written explanations.

-- The written rationale for the contract award, if the contract was not awarded to the proposer submitting the lowest price.

-- The written rationale for omitting recommended revisions to the plan of services as incorporated into the contract, if such revisions were omitted.

-- The notice of the contract award.

-- The executed contract.

The contents of the proposal file must be open to public inspection. [c.30B, §3].

CHAPTER SEVEN

EMERGENCY AND SOLE-SOURCE PROCUREMENTS FOR SUPPLIES AND SERVICES

Chapter 30B allows you to dispense with the normal procurement procedures for supplies and services only under the circumstances discussed in this chapter.

Emergency Procurements

If the time required to comply fully with all Chapter 30B procedures would endanger the health or safety of people or property due to an unforeseen emergency, a procurement can be made without following all procedures. Even under emergency circumstances, however, the law requires you to comply with statutory requirements to the extent possible, and allows you to procure only those supplies or services necessary to meet the emergency. [G.L. c.30B, §8].

In an emergency situation, if you do not have time to advertise, you must still solicit informal bids or quotes if possible. In addition, you must maintain a record of each emergency procurement, documenting the basis for determining that an emergency exists, all procedures followed to elicit competition, the name of the vendor, and a complete purchase description including the amount and type of contract. The record of an emergency procurement must be submitted as soon as possible to the Goods and Services Bulletin for publication.

Note that the Supreme Judicial Court has held that an awarding authority cannot artificially create an emergency by postponing normal purchases. If you have reason to know in advance that a supply or service will be needed, and you fail to act until the need has become critical, you will have difficulty justifying the use of emergency procedures. The use of emergency

procedures when there is not an emergency will invalidate any contract award, and may result in a penalty under G.L. c.30B, §17.

Sole-Source Procurements

A sole-source procurement is one which is made without advertising or competition. Chapter 30B places strict limitations on the award of sole-source contracts for supplies or services.

What supplies and services can be procured on a sole-source basis? Under Chapter 30B, no contract for $10,000 or more can be awarded without advertising and competition, except for the following items:

-- School textbooks and library books can be purchased without competition if you determine, after reasonable investigation, that there is only one source for those books.

-- Water, sewer, gas, electricity, or telephone services can be procured from a public utility company[38] without competition if there is only one source for the services.

When can contracts for less than $10,000 be awarded without competition? In addition to the special provisions for books and utility services, Chapter 30B allows procurements for under $10,000 to be made without competition when a reasonable investigation shows that there is only one source for the required supply or service.

In addition to requiring that you investigate possible alternative sources for every sole-source procurement, Chapter 30B requires you to maintain records which show each

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[38]Public utility company is defined in G.L. c.25, §3.

contractor's name, the amount and type of every contract, and your basis for determining that there was only one potential source for the supply or service purchased.

Can I award a contract if I advertise and only one vendor responds? Yes. The receipt of only one responsive bid or offer is not, under Chapter 30B, a sole-source procurement. If other vendors could have responded but elected not to, you may proceed. However, two cautionary notes are in order. First, you must carefully re-examine the purchase description to determine whether your specifications were unduly restrictive; it is not permissible to write the purchase description so as, in effect, to restrict the procurement to a sole source [u]nless no other manner of description suffices." [G.L. c.30B, §14]. Second, you may -- and should -- seek to find out why no one else responded. You may find that a change in your specifications, or simply trying again at a later time, would be likely to foster more competition and result in a better price. If so, you may be well advised to reject the bid or proposal, and try again.

CHAPTER EIGHT

REAL PROPERTY ACQUISITION AND DISPOSITION: A STEP-BY-STEP GUIDE

Chapter 30B establishes procedures which you must follow in acquiring by purchase or rental real property, or an interest in real property, with a cost greater than $500. Chapter 30B also establishes procedures for disposing by sale or rental of real property or an interest in real property. Some of the disposition requirements apply to all dispositions, regardless of value, while others apply only to dispositions with a value in excess of $500.[39]

Real property includes land and buildings, and appurtenant structures and fixtures attached to land and buildings. An interest in real property includes, but is not limited to, a title, lease, mortgage, lease-purchase agreement, rental agreement, tenancy-at-will, or easement.[40]

Chapter 30B does not apply to eminent domain and tax title takings, nor to a redemption or auction of tax title property authorized under the provisions of Chapter 60 of the General Laws. However, any sale of tax title property by other than an auction, including a sale after foreclosure, is subject to Chapter 30B.

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[39]The disposition requirements do not apply to the rental of residential property to qualified tenants by a housing authority or a community development authority.

[40]A license or permit to use real property is not an interest in real property. However, merely labelling a lease or some other real property interest a "license" or "permit" does not remove the transaction from the provisions of Chapter 30B if the transaction is not a true license or permit. If you have any question about whether you are dealing with a license or permit, or with an interest in real property, check with your attorney.

Who may acquire or dispose of real property on behalf of a governmental body? Any governmental body duly authorized by statute, charter, or ordinance may acquire or dispose of real property; Chapter 30B has no affect on who may undertake or approve a real property transaction. If there is any question in your jurisdiction, check with your attorney.

Under Chapter 30B, you must acquire and dispose of real property by soliciting proposals. This means that you must conduct an open and fair competition which places all proposers on common footing, solicit information that will allow manageable and meaningful comparisons of offers, and base your decisions solely on the information you solicited. Consequently, although real property transactions are in many ways unique, there are many similarities to using RFPs and bids for acquiring supplies and services, and you should review Chapters Four, Five, and Six of this manual to become familiar with the considerations involved in using RFPs and bids. In the discussion which follows, you will find that you are sometimes referred to specific steps in those other chapters.

Acquiring Real Property

The following procedures apply to the acquisition of real property or an interest in real property by rental or purchase when the cost of the acquisition exceeds $500.[41]

Step 1: Determine what you need.

As a practical matter, before you acquire any real property you must determine what you need. The initial cut at determining

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[41]Note, however, that the provisions of G.L. c.7, §40J, discussed in Step 9, apply to any acquisition regardless of cost.

your needs may be simple: for example, you need land for a public works yard, a parking lot, or office space. However, you must be more specific. For example:

-- How much land or office space is needed? Are you interested in acquiring a set amount, or are you willing to consider offers for more than your minimum needs?

-- What level of finish do you want for office space?

-- What are your location requirements? Is any area in your jurisdiction acceptable?

-- Are there any environmental issues relevant to the siting?

-- Are there any special utility requirements?

Of course, once you have identified what you need, you should ensure that it is not already available within your jurisdiction. If your jurisdiction has a real property inventory, you should consult it. In addition, you consult with department heads and other officials concerning the current and future availability of property to meet your needs.

If you do have to acquire property, should you lease or buy? Usually, short-term needs are best served by leases, and long-term needs are best served by ownership. In some cases, even with a long-term need, it may be necessary to rent for a term before buying: for example, if you do not currently have a bond authorization necessary for a purchase.

While you are assessing your needs and options, do some market research. Review real estate trade publications and discuss with several brokers the current market and opportunities for meeting your needs. Is new space coming onto the market in the near future? Will more existing space become available?

May I solicit proposals for a long-term lease, or a lease with an option to purchase, on a building to be constructed to my specifications? No. If you specify what is to be constructed and to what standards, you are engaged in a public building contract subject to the designer selection and construction bid laws.

Do not confuse determining what you need with identifying the particular parcel or building you need. Although your research may identify one parcel or building which is suitable, you will not know, before advertising, whether you have found the only property which meets your needs. Moreover, if you suspect there may only be one suitable parcel or building, consider whether you should review your needs to make sure that you are not unnecessarily restricting competition by specifying requirements that few property owners will be able to satisfy.

Step 2: Develop your request for proposals (RFP).

Under Chapter 30B, you must solicit proposals. This requires that you develop a written RFP specifying what you need (the "specifications"), indicating how you will evaluate proposals (the "evaluation criteria"), and laying out the submission requirements and the contract terms and conditions.

Specifications. You must describe the real property you need in sufficient detail to enable lessors or sellers to submit responsive proposals. Your written description (or "specifications") will be akin to a purchase description for supplies or services. Your specifications should identify the type and amount of real property you need (for example, 20,000 square feet of land), the purpose for which the property is to be used (for example, a public works yard), any special requirements (for example, that the property not be adjacent to wetlands or over an aquifer), and who is eligible to submit

proposals (for example, owners or agents of owners). If you have any drawings or other documents (for example, a study of your requirements for a public works yard), either append them to the specifications or incorporate them by reference and state where the documents may be obtained. You must specify the method of acquisition you intend to use (for example, lease, lease-purchase, or purchase), when you want occupancy, and the term of the contract.[42]

> Can I request price alternatives for a one-year, two-year, or three-year lease? No. This kind of solicitation defers a significant specification decision -- the duration of the lease -- until the proposals have been revealed. Fair competition is impossible under these conditions. The RFP must specify the term of the lease and the conditions for its renewal or extension.

For additional considerations in developing your specifications, see Step 6 in Chapter Four of this manual.

Evaluation criteria. You must indicate how you will select a proposal from among the competing proposals. The process is similar to using an RFP for competitive proposals to procure supplies or services, and requires the establishment of both minimum criteria to evaluate responsibility and responsiveness, and comparative criteria. For background, you should review these issues under Step 7 of Chapter Four of this manual.

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[42]You may enter into a contract for any period of time which serves the best interests of your jurisdiction. If you wish to contract for a term of more than three years, including any renewal, extension, or option, you must receive authorization by a majority vote of the appropriate body in your jurisdiction. The majority vote requirement and other rules governing contracts for more than three years are discussed in detail in Chapter Three of this manual.

In applying comparative criteria, you may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and results in manageable and meaningful comparisons. You need not apply the rating system that is outlined in Chapter Six of this manual, but you should consider doing so. Whatever rating system you employ must be disclosed to proposers in your solicitation.

You must inform proposers how you will treat price proposals to determine which proposer offers you the best price. For example, in a multi-year lease, will you accept only proposals for level monthly rent payments over the term, or will vendors be allowed to propose different monthly rents for each year of the lease? In the latter case, you will have to use a formula for calculating the discounted present value of payments made over time in order to realistically compare prices. The formula must be included in the RFP. Similarly, if you will accept price proposals for a lease which includes utilities and for a lease which does not, you must establish and include in the RFP the mechanism you will use to determine the value of the utilities.

For additional considerations in developing your evaluation criteria, see Step 7 in Chapter Four of this manual.

Submission requirements. You must inform proposers of the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify, or withdraw proposals. State that the selected proposer will be required to submit a disclosure of beneficial interests as required by G.L. c.7, §40J.[43] Include any

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[43]It is recommended that you require each proposer to submit a disclosure form as part of the proposal.

standard forms proposers must submit. If you incorporate documents by reference into the RFP, you must specify where vendors may obtain the documents.

Chapter 30B does not require the separate submission of price and non-price information in real property acquisition proposals. Moreover, Chapter 30B affords no confidentiality to proposals; they must be opened in public, and all the information contained in them is public.

For additional considerations in developing your submission requirements, see Step 9 in Chapter Four of this manual.

Contract terms and conditions. You must specify any terms and conditions you will require in the agreement. If you are leasing, you should include standard lease terms. See Step 10 in Chapter Four of this manual for guidance in developing the terms and conditions.

Step 3: Advertise for proposals.

You must advertise to invite proposals. The advertisement must be placed in a newspaper with a circulation sufficient to inform the people of the affected locality. It must be published at least once a week for two consecutive weeks preceding the day established for the opening of proposals. You may, of course, advertise in more than one newspaper, advertise more than twice, and post the notice in a public place.

The advertisement must specify the geographical area in which you wish to acquire property, the terms and conditions of the proposed transaction, and the time and place for submission of proposals. You should inform vendors where and when they may obtain a copy of the RFP. You may include other information in

the notice. For example, if you have decided to establish a charge for copies of the RFP, you should disclose the amount of the charge and the form in which it may be paid.

If the proposed acquisition involves more than 2,500 square feet, an advertisement must also be published, at least 30 days before the opening of proposals, in the Central Register published by the Secretary of State. A form for this purpose and instructions for submitting it are included in Appendix A at the end of this manual.

Exceptions to advertising requirements. You may shorten the advertisement period, or waive it completely if your jurisdiction determines either: (1) that an emergency exists and the time needed to comply with the requirements would endanger the health or safety of people or their property, or (2) that advertising will not benefit your jurisdiction's interests because of the unique qualities or location of the property needed. These are narrow, limited exceptions which may not be employed except in specific circumstances.

The first exception requires that a true emergency exists; simple inconvenience is not an emergency. In addition, the time required to comply with the advertising requirement -- approximately two weeks if less than 2,500 square feet is involved, and one month if more than that is involved -- must actually endanger the health and safety of people or property. You may only contract for such term as is reasonably necessary to deal with the emergency. You must publish in the Central Register at the earliest opportunity a statement of the reasons for declaring the emergency.

Note that the Supreme Judicial Court has held that an awarding authority cannot artificially create an emergency by postponing action. If you have reason to know in advance that additional

leased space or a real property purchase will be needed, and you fail to act until the need has become critical, you will have difficulty justifying the use of emergency procedures.

The second exception requires a written determination by your jurisdiction that advertising will not benefit your jurisdiction's interest because of the unique qualities or location of the property needed; the determination must also specify how the property proposed for acquisition satisfies the unique requirements. At least thirty days before you execute a binding agreement to acquire any real property without advertising, you must publish the following in the Central Register: the written determination, the disclosure of the parties with a beneficial interest in the property (required by G.L. c.7, §40J), the location and size of the property, and the proposed purchase price or rental terms.

Note that the uniqueness exception is also restrictive. It does not allow the unadvertised acquisition of real property on the basis of a boilerplate statement that the parcel is uniquely situated; all real property is uniquely situated. Rather, this exception applies to circumstances in which only one parcel can possibly meet a valid need: for example, acquisition of the only open land abutting an existing municipal park.

Step 4: Distribute the RFP.

The RFP must be made available on an equal basis to all who request a copy. A record should be kept of who received the documents. If it becomes necessary to issue an addendum to the RFP, the addendum should be sent to all those who have already received the RFP. Also, to avoid misunderstandings or protests, you may want to require proposers to acknowledge in writing their receipt of any addenda.

You may inform potential proposers, including brokers, of the availability of the RFP, or simply supply them with a copy of the RFP. Be careful, however, to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert only selected brokers of an upcoming acquisition in advance of the public notice.

> May I charge for copies of the RFP? Yes. But keep in mind that the RFP must be made available to all persons on an equal basis, so the same charge must apply to everyone. In considering whether to establish a fee for the RFP, consider that a fee may serve to lessen competition.

Step 5: Receive sealed proposals.

Step 11 of Chapter Six provides guidance on receiving proposals. Note, however, one difference from proposals for supplies or services: you will not receive separate price and non-price proposals for real property.

Step 6: Open and register the proposals.

Proposals must be opened in public at the time and place specified in the RFP. You should record the name of each proposer, the location of the property each proposer is offering, and each proposal price.

Step 7: Evaluate the proposals.

You must evaluate proposals using only the criteria identified in the RFP. For information on evaluating proposals using comparative evaluation criteria, review Steps 13 through 15 of Chapter 6 of this manual.

Step 8: Publish a disclosure in the Central Register.

Submit the name of the selected proposer and the amount of the transaction to the Central Register published by the State Secretary. (A form for this purpose is included in Appendix A at the end of this manual.)

Step 9: Send the disclosure of beneficial interests to DCPO.

The selected proposer's disclosure of beneficial interests form, required by G.L. c.7, §40J, must be filed with the Deputy Commissioner of the State Division of Capital Planning and Operations. No contract to rent or purchase real property is valid until the disclosure form is filed.

Step 10: Execute the contract.

You must execute a written contract containing all the terms and conditions stated in the RFP.

Step 11: Retain records.

A file of all written documents required by Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. These documents include the following:

-- The request for proposals, and any amendments.
-- The public advertisement.
-- All Central Register notices.
-- All proposals received.
-- Evaluation materials.

-- A copy of the statement of beneficial interests required by G.L. c.7, §40J.

-- The contract.

Disposing of Real Property

The following procedures apply to the disposition by sale or rental of real property or an interest in real property (except the rental of residential property to qualified tenants by a housing authority or a community development authority). All steps apply to dispositions of real property with a value greater than $500. Steps 1 through 3 as well as the second paragraph of Step 10 apply to any such disposition, regardless of its value.

Step 1: Determine whether the property is surplus.

There are, typically, two ways that property may be identified as surplus to your jurisdiction's needs. First, events may make obvious that the property is no longer needed for its current use. For example, a school or office may recently have been closed. Second, efforts may be undertaken to identify underutilized property and raise revenue through rental or sale.

In considering whether property is surplus, consider current and future needs. The property may no longer be needed for the purpose it served in the past, but another use may be made of it, possibly by another department, either now or in the future. For example, you may determine that growth trends will likely lead to the need for a larger administrative office in the near future, and a building which is currently unneeded may be able to serve that future need.

Take a systematic approach to assessing current and future needs. Survey all department heads in writing about their anticipated needs. Develop a comprehensive inventory of real property. Plan ahead before putting real property up for sale. Getting it back will not be cheaper.

You should reduce your findings to writing. Your written report should include an identification of the property, a description of its current use, your efforts to identify current or future needs, current or future needs you identified, alternatives considered, and your recommendation.

Step 2: Declare surplus property available for disposition and identify reuse restrictions.

You may not dispose of any real property that you have determined to be surplus -- regardless of its value -- until it has been declared available for disposition by the individual or body with the authority to make such a determination for your jurisdiction. Your written assessment of current and future needs for the property should be a prime consideration in making this decision. The declaration should be in writing, and must be made by the individual or governing body with the authority to make such a determination.

If your jurisdiction wishes to impose any restrictions on reuse of the property, they must be specified as part of the declaration. You may impose any reasonable restriction that is in the best interest of your jurisdiction. For example, you may want to specify that the property be used for the development of affordable housing. You may not, however, impose restrictions for the purpose of affording one vendor a competitive advantage.

Step 3: Determine the value of the property.

Before you can dispose of any property, you must determine its value. If you plan to rent the property, you must determine its rental value. If you plan to sell the property, you must determine its sale value.

Chapter 30B requires you to determine the property's value by using procedures customarily accepted by the appraising profession as valid. You are not required to hire an appraiser; you may hire one, or you may use a volunteer or someone on your staff who can apply valid procedures. You are not required to have an appraisal performed; you may, but you may also rely on any estimate of value in any form that results from the application of valid procedures.

> May I rely on the municipal assessment of a property's value? Yes, if it is current, if the municipality is assessed at 100 per cent, and if the assessment is determined through valid procedures.

Step 4: Develop your RFP.

Under Chapter 30B, you must solicit proposals. This requires that you develop a written RFP describing the property and interest to be disposed (the "property description"), indicating how you will evaluate proposals (the "evaluation criteria"), and laying out the submission requirements and the contract terms and conditions. Although you must solicit proposals, you have the discretion to structure your RFP so that it is, in effect, a request for bids, where you will make the disposition to the person who meets your minimum criteria and offers the best price.

Property description. Describe the property in sufficient detail for interested parties to understand what you are offering. Real property offered for sale must be identified with reference to a deed description or survey, or if a survey has not been performed, with sufficient specificity to identify the property. The property description must also make clear the buildings and structures included in the disposition and any restrictions on their use (for example, deed restrictions). Drawings, plot plans, or other relevant documents should either be appended to the specifications or incorporated by reference; in the latter case, interested parties must be informed where to obtain the documents. The notice must state the terms of the disposition -- including whether it is a lease or a sale -- and, if you are leasing the property, for what term. You must also identify any reuse restrictions established by your jurisdiction in Step 2, above.

Evaluation criteria. You must specify how you will select a proposal from among competing proposals. If your primary objective is to get the highest price for the real property, this will be a relatively simple procedure in which you establish minimum criteria to determine responsiveness and responsibility, and then sell or lease the property to the highest bidder who meets your criteria.

If, on the other hand, your jurisdiction seeks to promote other objectives through the disposition, the task of establishing clear evaluation criteria will be more complex. Your jurisdiction could decide, for example, to dispose of property to the person who proposes to develop it in a manner which maximizes affordable housing, or employment. In that case, your RFP must specify how proposals will be compared according to the number and mix of jobs provided, or the number of affordable units of housing created. To decide among proposers, you will need to articulate criteria for determining

who has the experience and resources to deliver what they propose, and you must also evaluate the feasibility of the proposed project.

A redevelopment authority may have a variety of development objectives to accomplish through real property dispositions. The disposition of real property in accordance with a development plan requires a complex RFP which includes not only minimum criteria for responsiveness and responsibility, but also coherent standards for assessing the economic viability and impact of the proposed project and for evaluating proposals according to clearly articulated objectives. It is not permissible to rely on such vague standards as "desirability" or "overall impact on the community" to select a proposal. The proposals must be compared on the basis of clearly identified standards which are coherently related to stated objectives.

A jurisdiction might seek to dispose of tax-foreclosed lots to community-based groups for playgrounds or community gardens. An RFP for such a disposition will include criteria for judging the eligibility and viability of any group and its wherewithal to carry out the project. The selection process must afford all qualified groups the opportunity to come forward and be fairly considered.

In applying comparative criteria you may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and results in manageable and meaningful comparisons. You need not apply the rating system that is outlined in Chapter Six of this manual, but you should consider doing so. Whatever rating system you employ must be disclosed to proposers in your solicitation.

If price will be a factor in your selection process, you must inform proposers how you will treat price proposals to determine the best price. For example, in a multi-year lease, will you accept only proposals for level monthly payments over the term, or will proposers be allowed to propose escalating rents for each year of the lease? In the latter case, you must use a formula to calculate the discounted present value of the rental payments over time. This formula must be included in your RFP.

For additional considerations in developing your evaluation criteria, see Step 7 in Chapter Four of this manual.

Submission requirements. You must inform proposers of the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify, or withdraw proposals. Inform proposers that the selected proposer must comply with G.L. c.7, §40J, which requires a disclosure of beneficial interests to be filed with the Deputy Commissioner of the Division of Capital Planning and Operations.[44] Include any standard forms proposers must submit. If you incorporate documents by reference into the RFP, you must specify where proposers may obtain the documents.

Chapter 30B does not require the separate submission of price and non-price information in real property disposition proposals. Moreover, Chapter 30B affords no confidentiality to proposals; they must be opened in public, and all the information contained in them is public.

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[44]It is recommended that you require each proposer to submit a disclosure form as part of the proposal.

For additional considerations in developing your submission requirements, see Step 9 in Chapter Four of this manual.

Contract terms and conditions. You must specify any terms and conditions you will require in the agreement. If your jurisdiction has imposed any reuse restrictions in Step 2, above, the restrictions should be included in the contract. For example, it is advisable to specify in any lease that if the restrictions are violated, the lease shall be terminated.

The contract should state that all contract amendments must be in writing, and must be approved and signed by an official authorized to sign contracts on behalf of your jurisdiction. You should be aware that Massachusetts case law prohibits any substantial alteration to the terms and conditions of a competitively procured contract. The only contract amendments which can be authorized are minor changes, incidental to the original agreement. This means that if you are disposing of property to a developer whose proposal to build housing was selected from among competing proposals through an RFP process, you cannot legally alter that agreement with the developer to allow some other kind of development. Any amendment that substantially changes the terms of the original contract -- or amounts, in effect, to a change in the rules under which the original competition was conducted -- requires readvertising and the award of a new contract.

Step 5: Advertise for proposals.

You must advertise to invite the submission of proposals. The advertisement must be placed in a newspaper with a circulation sufficient to inform the people of the affected locality. It must be published at least once a week for two consecutive weeks preceding the day established for the opening of

proposals. You may, of course, advertise in more newspapers and more frequently.

You should place your advertisement in the section of the newspaper which is most likely to draw the attention of persons interested in submitting a proposal. For example, if you are offering office space for lease, you will probably reach more potential lessees by advertising in the classified section under "Office Space" than by printing the advertisement in the legal notices.

The advertisement must specify the geographical area, the terms and conditions of the proposed transaction, and the time and place for submission of proposals. You should inform proposers where and when they may obtain a copy of the RFP. You may include other information in the notice. For example, if you have decided to establish a charge for copies of the RFP, you should disclose the amount of the charge and the form in which it may be paid.

If the proposed disposition involves more than 2,500 square feet, an advertisement must also be published, at least 30 days before the opening of proposals, in the Central Register published by the Secretary of State. A form for this purpose and instructions for submitting it are included in Appendix A at the end of this manual.

Step 6: Distribute the RFP.

The RFP must be made available on an equal basis to all who request a copy. A record should be kept of who received the documents. If it becomes necessary to issue an addendum to the RFP, the addendum should be sent to all those who have already received the RFP. Also, to avoid misunderstandings or

protests, you may want to require proposers to acknowledge in writing their receipt of each addendum.

You may inform potential proposers, including brokers and developers, of the availability of the RFP, or simply supply them with a copy of the RFP. Be careful, however, to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert only selected developers of an upcoming acquisition in advance of the public notice.

> May I charge for copies of the RFP? Yes. But keep in mind that the RFP must be made available to all persons on an equal basis, so the same charge must apply to everyone. In considering whether to establish a fee for the RFP, consider that a fee may serve to lessen competition.

Step 7: Receive sealed proposals.

Step 11 of Chapter Six provides guidance on receiving proposals. Note, however, one difference from proposals for supplies or services: you will not receive separate price and non-price proposals for real property.

Step 8: Open and register the proposals.

Proposals must be opened in public at the time and place specified in the RFP. You should record the names of each proposer and the proposal price.

Step 9: Evaluate the proposals.

You must evaluate proposals using only the criteria identified in the RFP. If your RFP indicates that you will make an award to the responsive and responsible bidder who offers the best price, follow the evaluation procedures discussed in Step 10 of

Chapter Five of this manual. If your RFP indicates that you will also consider comparative evaluation criteria, review Steps 13 through 15 of Chapter Six of this manual.

Step 10: Publish disclosures in the Central Register.

Submit the name of the person selected to receive the property and the amount of the transaction to the Central Register published by the State Secretary. (A form for this purpose is included in Appendix A at the end of this manual.)

In addition, if you decide to dispose of the property at a price less than the value you determined in Step 3, above, you must publish a notice of your decision in the Central Register, explaining the reasons for this decision and disclosing the difference between your valuation of the property and the accepted disposition price.

Step 11: Send the disclosure of beneficial interests to DCPO.

The selected proposer's disclosure of beneficial interests required by G.L. c.7, §40J, must be filed with the Deputy Commissioner of the State Division of Capital Planning and Operations. No contract to lease or sell real property is valid until the disclosure form is filed.

Step 12: Execute the contract.

You must execute a written contract containing all the terms and conditions stated in the RFP.

Step 13: Retain records.

A file of all written documents required by Chapter 30B must be maintained for a period of six years from the date of final

payment under the contract. These documents include the following:

-- The surplus declaration.

-- The request for proposals, if the property value exceeds $500, and any amendments.

-- The public advertisement, if the property value exceeds $500.

-- All Central Register notices.

-- All proposals received, if the property value exceeds $500.

-- Evaluation materials.

-- A copy of the statement of beneficial interests required by G.L. c.7, §40J.

-- The contract.

CHAPTER NINE
DISPOSING OF SURPLUS SUPPLIES

Chapter 30B sets out rules to ensure that you obtain the best possible return for all items of value that are no longer useful to your local government. These rules apply to all tangible property (except real property) including motor vehicles, machinery, computer equipment, furniture, and other materials and supplies. The term "supplies" in Chapter 30B refers to all of these kinds of property.

Chapter 30B permits each jurisdiction to establish and approve its own written procedures to dispose of surplus supplies valued at less than $500. [G.L. c.30B, §15].

For supplies with a resale or salvage value of $500 or more, Chapter 30B provides three alternative methods of sale: (1) sealed bids, (2) a public auction, or (3) an established market.[45] The procedure for disposing of supplies by either soliciting bids or holding an auction consists of the following steps:

Step 1: Prepare a notice of sale.

You must provide public notice of any sale by bid or auction. This notice will include the following information:

1. A complete description of the surplus supplies offered. You may incorporate by reference other documents which provide detailed information, if you specify where bidders may obtain those documents.

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[45]An established market is one in which commodities are regularly sold in wholesale lots and prices are set by open competition. As a practical matter, this option will rarely be available, and you will almost always sell supplies via sealed bids or auctions.

2. When, where, and how the supplies can be inspected by the public prior to auction or bid opening.

3. All terms and conditions of the sale, such as the form of payment required, any deposit required to participate in the bidding or auction, the rules governing any auction, and when the supplies must be removed after the purchase.

4. The place and deadline for submitting bids, and the place, date, and time for the bid opening or auction.

5. A statement that you retain the right to reject any and all bids.

6. If you are soliciting sealed bids, a statement that every bid must be signed by a person authorized to bind the bidder, and accompanied by a certificate of non-collusion. You should indicate in the notice of sale where bidders can obtain a certificate of non-collusion form. This form is contained in Appendix A at the end of this manual.

Step 2: Advertise the sale.

The sale must be advertised by both posting and publishing the notice of sale in advance. The notice of sale must remain posted for at least two weeks in a conspicuous place at your offices. In addition, the notice of sale must be published not less than two weeks prior to the bid opening or auction in a newspaper of general circulation in your jurisdiction. If the supplies offered for sale have an estimated value of $100,000 or more, the notice must also be published prior to the bid opening or auction in the Secretary of State's Goods and Services Bulletin. [G.L. c.30B, §15(c)]. You may also send copies of the notice of sale to anyone who might be interested.

Step 3: Open and review the bids or hold the auction.

If you have solicited sealed bids, the bids should be opened publicly. You must reject any bid which is nonresponsive -- i.e., which does not conform to the terms and conditions of your notice of sale.

If you hold an auction, it must be open to the public. You may want to confer with a professional auctioneer, or use one to conduct the auction. The auction must, of course, be conducted in conformity with the rules spelled out in the notice of sale.

Step 4: Record the sale or execute a sales agreement.

The supply must be sold in conformity with all the terms and conditions spelled out in the notice of sale to the highest responsive bidder, unless you reject all bids as unacceptable. If the buyer takes possession of the supply on the spot, a record of the transaction (acknowledgment of receipt by the buyer) should be made. If the property is to be picked up and paid for later, a written sales agreement should be executed as soon as a bid is accepted.[46] The agreement should incorporate the description of the supplies sold, the price, and all conditions of the sale. The agreement should be signed by the purchaser, and by an official with authority to sign such contracts in your jurisdiction.

What happens if no acceptable bid is submitted? If you reject all bids, you have two options. You can readvertise and conduct a new sale, either through sealed bids or a public auction; or you can negotiate the sale of the supplies to any party, as long as the negotiated sale price is more than the highest bid price.

Can a surplus item be traded in on purchases? Yes. If you decide to offer an item for trade-in, you can include it in an invitation for bids or a request for proposals, as part of a procurement. However, you should be aware

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[46]All Chapter 30B contracts of $5,000 or more are void unless they are in writing. [G.L. c.30B, §17].

that the dealer who may give you the best price for the surplus item may be someone other than the dealer who will give you the best price for the new supplies. Therefore, it is likely to be more cost-effective to separate the transactions -- i.e., to sell the surplus supplies through bid or auction after you have purchased the new items.

Can surplus supplies be donated to charities? Yes. Your jurisdiction may approve the disposal of surplus supplies at less than fair market value to any organization which has an IRS tax exempt status by reason of its charitable nature. Any such donation must be approved in advance by a majority vote, defined as follows:

-- For towns or districts: a majority vote taken at a duly called town or district meeting.

-- For cities: a majority vote of the city council or the city commissioners, and the approval of the mayor, if such approval is required under the city charter.

-- For counties: a majority vote of the county commission.

-- For regional school districts: an affirmative vote by two-thirds of the members of the school committee.

-- For redevelopment, housing, or other authorities: a majority vote of the governing board.

CHAPTER TEN
ESTABLISHING A SHELTERED MARKET PROGRAM

A sheltered market program is a mechanism for helping minority or women-owned businesses gain a foothold in the public contracting arena. Such programs are designed to introduce firms to the public procurement process. The ultimate objective is to give disadvantaged vendors experience so that they can win a fair share of contracts when competing outside the sheltered market program.

When authorized by majority vote, the Chief Procurement Officer (CPO) may establish a sheltered market program which conforms to the requirements contained in Chapter 30B. A sheltered market program is a program under which certain contracts are designated by the CPO for procurement from one or more classes of disadvantaged vendors, as defined in G.L. c.7, §40N. For the most part, sheltered market program contracts are subject to the same requirements as other contracts covered by Chapter 30B. (See Chapters Four, Five, and Six of this manual.)

A sheltered market program may be required, under judicial interpretations of the U.S. Constitution, to be based on findings that the program is a remedy for the current effects of past discrimination. This is an evolving area of Constitutional law in which there has been extensive litigation in recent years. It is therefore recommended that you consult your attorney on this issue.

Vendor Eligibility

Chapter 30B employs the definitions of "minority" and "women-owned" business contained in G.L. c.7, §40N. Your sheltered market program may be used for a single contract or for any number or types of contracts. The program must designate which

disadvantaged vendors (e.g., all minority vendors specified in G.L. c.7, §40N) are eligible to participate in the program.

Procedures

Before setting up a sheltered market program, you must develop written procedures in accordance with the detailed requirements outlined in Chapter 30B. The basic elements to be included in the written procedures are as follows:

-- Procedures for certifying disadvantaged vendors. (Alternatively, or in addition to local certification, you may rely on certification by the State Office of Minority and Women Business Assistance.)

-- Procedures for designating contracts eligible for the sheltered market program (if the majority vote authorization does not designate specific eligible contracts).

-- Procedures for ensuring effective competition among disadvantaged vendors for sheltered market program contracts (including supplemental advertising in appropriate media).

-- Procedures for review and assessment of the sheltered market program -- on at least an annual basis -- based upon a detailed written report by the CPO.

The CPO is responsible for approving the written procedures after notice and a public hearing. After doing so, the CPO must file the procedures with the State Office of Minority and Women Business Assistance and with the Secretary of State. The CPO must also publish the procedures, or a summary of the procedures, in a general circulation newspaper within the area served by your jurisdiction and in the Goods and Services Bulletin.

Advertising

You must advertise sheltered market program contracts in accordance with the Chapter 30B advertising requirements set forth in Chapters Five and Six of this manual. You may not award a sheltered market program on a sole-source basis. Each advertisement for a sheltered market program contract must include a statement that the contract will be awarded under a sheltered market program, and must specify the class or classes of disadvantaged vendors included in the program.

Contracting

If you receive fewer than three responsive bids, proposals, or quotations -- or if you choose to reject all bids, proposals, or quotations -- you may not award the contract under the sheltered market program.

The term of a sheltered market program contract may not exceed three years, including any and all contract renewals, extensions, and options.

The law restricts each disadvantaged vendor to one sheltered market program contract at a time up to a maximum of three sheltered market program contracts per year. These restrictions apply to sheltered market programs operated by all governmental bodies. Therefore, you may not award a sheltered market program contract to a disadvantaged vendor if, at the time of the award, the vendor is a party to any other unexpired sheltered market program contract with your -- or any other -- jurisdiction.

Note that Chapter 30B does not prevent you from including, in bid or proposal specifications, an affirmative action component requiring vendors to set aside a specified portion of the

contracted work to be performed by qualified disadvantaged vendors. Work performed by disadvantaged vendors under set-aside provisions is not subject to the restrictions set forth in the preceding paragraph.

APPENDIX A

STANDARD FORMS

You may make copies of the standard forms included in this section.

Chief Procurement Officer's Delegation of Procurement Powers and Duties

(Type or print legibly)

ID #: (To be filled in by OIG)

1. ☐ Original Delegation ☐ Amendment* ☐ Revocation* *ID #: _____

2. Pursuant to the provisions of G.L. Chapter 30B, section 19, I hereby delegate the powers and duties set forth below to:

Name _____
Title _____
Department _____
Office Address _____
_____ Zip _____
Office Telephone ( ) –

3. I hereby delegate the following Chapter 30B powers and duties with respect to the procurements specified herein:

☐ Solicit ☐ Open ☐ Evaluate ☐ Award ☐ Reject/Cancel
☐ Exercise options ☐ Increase quantities ☐ Maintain records
☐ All of the above ☐ Other (specify in an attachment)

4. This delegation pertains to procurements:

☐ for the following department(s): _____
☐ for the following contract(s): _____
☐ other (specify in an attachment)

involving: Supplies Services

☐ ☐ under $1,000 (no solicitation required)
☐ ☐ from $1,000 to $9,999 (telephone quotes)
☐ ☐ $10,000 and over using ☐ bids ☐ proposals
☐ ☐ emergency procedures

5. This delegation is conditioned upon compliance with G.L. c.30B, all applicable statutes, rules, regulations, charters, ordinances, or bylaws, and subject to the following additional requirements:

☐ Final approval of award by Chief Procurement Officer
☐ Approval of all documents by Chief Procurement Officer prior to issuance
☐ Other (specify in an attachment)

6. This delegation shall remain in effect until revoked or amended. Otherwise, this delegation shall expire on: _____.

7. I hereby certify that I am the Chief Procurement Officer of: _____

8. Signed _____ Date _____
Name _____
Title _____
Department _____
Office Address _____
_____ Zip _____
Office Telephone ( ) –

9. Send the original of this form to Office of the Inspector General, 1 Ashburton Place, Rm 1311, Boston, MA 02108. No delegation, amendment or revocation shall take effect until it is received by the Office of the Inspector General.

Instructions
Chief Procurement Officer's
Delegation of Procurement Powers and Duties Form

Chapter 30B, section 19, of the General Laws authorizes the Chief Procurement Officer (CPO) of a governmental body to delegate procurement powers and duties to other employees of the governmental body. The CPO has great discretion in making a delegation -- it can be very specific and limited, or very broad.

Keep in mind that you may only delegate powers you legally have under Chapter 30B and other applicable statutes, rules, regulations, charters, ordinances, or bylaws. For example, where statutes or other rules require that a contract be approved by the mayor, city council, board of selectmen, or school committee, such final approval is not the CPO's to delegate.

You must complete and sign one delegation form for each delegation of powers and duties, and for each subsequent amendment or revocation of an original delegation. Step-by-step instructions are listed below.

Step

1. Check the appropriate box. If you are amending or revoking a previous delegation, enter the ID number shown on the original delegation form returned to you by the Office of the Inspector General.

2. List the full name, official title, department, office address and office telephone number of the person to whom you are making this delegation.

3. Check as many boxes as apply. If you wish to delegate powers and duties in addition to, or other than, those listed on the form, check "Other" and specify the powers and duties you are delegating in an attachment.

4. Check as many boxes as apply. If necessary, list additional departments or contracts in an attachment. If you wish to restrict the delegation in some way other than those listed on the form, check "other" and specify the procurements to which this delegation pertains in an attachment.

5. Check as many boxes as apply. If you wish to impose requirements not listed on the form, check "Other" and specify the requirements in an attachment.

6. Enter the expiration date, if any. If there is no scheduled expiration date, enter "Not Applicable."

7. Enter the name of your governmental body.

8. Sign and date the delegation form. List your name, official title, department, office address and office telephone number.

9. Send the original of this form to the Office of the Inspector General at the address provided on the bottom of the form.

No delegation or subsquent amendment or revocation of an original delegation shall take effect until the original of this form has been received by the Office of the Inspector General. Upon receipt, the Office will date-stamp the form, assign an ID number, and return the original form to the CPO. A copy will be retained in the Office's file.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

_____
(Name of person signing bid or proposal)

_____
(Name of business)

CR3 CENTRAL REGISTER - ACQUISITION OR DISPOSITION OF REAL PROPERTY

The proposed sale, rental, acquisition or disposition of public property which is 2,500 sq. ft. or more. Must be published 30 days prior to the proposal deadline.

AUTHORITY

DESCRIPTION OF PROPERTY

PROPOSAL DEADLINE

ESTIMATED VALUE, SOURCE OF VALUATION

ADDITIONAL INFORMATION

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ESTIMATED VALUE, SOURCE OF VALUATION

ADDITIONAL INFORMATION

APPENDIX B

INFORMATION ON COLLECTIVE PURCHASING THROUGH THE STATE PURCHASING AGENT

The following materials describe the collective purchasing (or "blanket") contracts available to municipalities, counties, districts, and authorities. For general information on collective purchasing through the State Purchasing Agent, you may contact the Collective Purchasing Bureau at (617)727-2920.

To: All Purchasing Officials

From Collective Purchasing Bureau

Date: July 17, 1989

SUBJECT:Collective Purchasing Notes

The enclosed package of awards, and similar mailings are sent to political subdivisions six or seven times each year. The awards are mailed as soon after the effective date as they can be printed, processed for mailing, etc. Most awards are in effect for the period of one year.

The notices are put into a package with many other notices because this is the most efficient means of producing them at this time. We suggest that the award notices be separated and put together by buying group for future reference. As our predecessor, Joe Sheriff, used to say, "make up a Sears Roebuck catalog of them in a three ring binder and keep them current by adding newer notices, discarding older notices."

Our buying groups are listed below, along with an example of the contracts under their jurisdiction:

1. Automotive - Anti-freeeze, automotive batteries, oil filters, pavement marking materials, red emergency flares, spark plugs, tires and tubes, bituminous concrete and rapid setting concrete, etc.

2. Engineering - Air and vacuum valves, fuel oil solvents, laundry and industrial chemicals, liquid chlorine, oils and lubricants, etc.

3. Office Supplies - all stationery, office supplies, office furniture, calculators and typewriters, micrographic equipment, fax machines, bottled water and water coolers, etc.

4. Printing - Continuous tabulating forms, paper stock.
   General supplies - Cleaning maintenance equipment and the materials to make them function-soap, bleach, fertilizer, flashlights and batteries, lumber, lamps, sponges, glass, wiping rags, paint, paper products, trash bags, etc.

6. Medical - CPR mannequins, vaccines, first aid equipment, etc.

The award notices themselves have the award item at the top of the page, along with the contract beginning and ending date. The Supplier (s) are then listed with the company name and address, contact person (if necessary) and phone number. The awards read from the top down, showing commodity number, contract and item numbers, awarded supplier, the unit price and minimum quantity that can be ordered (if any). Then reading down is a more complete description of the item awarded, the manufacturer, brand, standard package, and stock. Then on to the next commodity number, etc.

At the end of the award notice is a Terms and Condition Section, pointing out any special Terms and Conditions which may pertain to the award. For the most part delivery cost is included in the price, if there is to be an additional charge for delivery it will be so noted.

To use the awards all a subdivision has to do is cut a purchase order direct to the vendor, stipulate on the front of the P.O. that you are purchasing from the state contract/ forward the P.O. to the vendor and the invoice when due. All we ask is that you forward a copy of your P.O. to our office so that we may determine usage/volume of our awards.

Should you have any problems with the vendor or the products he sends you under the contract, please write us (giving all details) and we shall check with the vendor to see that all provisions of the award are complied with.

The benefits of using State Blanket awards are many:

1. Lower prices obtained because of large volume contracts.
2. Time and money saved because you do not have to bid - the State has already bid the item.
3. Money saved because you do not have to advertise the bid.
4. Labor again saved because you do not have to evaluate bids received.
5. "Clout" of the State is behind any complaints/poor service you may receive.

A few examples of savings through use of State Blanket awards:

1. Fluorescent/Incandescent bulbs
   A. Fluorescent F40CWRS/EW11C. List price $4.27. State Contract Price $0.635, minimum purchase necessary 30 bulbs. Incandescent, 60, 75, 100 watt bulbs. List price $1.18. State Contract price $0.216. minimum purchase necessary 120 bulbs.

2. Envelopes
   A. Printed #10 4 1/8 x 9 1/2. List $30.00-35.00, Contract $10.40 per 1000.
   B. Printed window #10 4 1/8 x 9 1/2. List $32.00-37.00 Contract $14.30 per 1000.

Massachusetts General Laws, Chapter 7, Sections 22A and 22B as amended make it possible for any city, town, district, county or authority to make purchases through the State Purchasing Agent's Office, in accordance with rules and regulations prescribed by the State Purchasing Agent.

It is difficult to find reasons for not purchasing under the Collective Purchasing plan. Why not give it a try, if you haven't already done so. Remember, all we ask is that you send us a copy of the purchase order for items ordered through our program. Any questions, please call us at 727-5051. We are happy to assist you with any purchasing problems you may have.

The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Department of Procurement and General Services
One Ashburton Place, Boston 02108

The contact in our office for subdivision information relating to Voice and Data Processing Goods and Services is Mr. Joseph Molloy at (617)727-4407. Mr. Molloy will be pleased to inform cities and towns of the blanket contracts which are in effect.

The department mails updates of their contract listing quarterly to their list of EDP persons in the subdivisions. Included in their listing are contracts for the following:

Cabling
Data Communications
Microcomputers
Microcomputer networks
Minicomputers
Software
Storage
Telecommunications
Terminals, Printers and Controllers

APPENDIX C

SOURCES OF ADVICE AND ASSISTANCE

MASSACHUSETTS PUBLIC PURCHASING
OFFICIALS ASSOCIATION

The following list of purchasing officials have volunteered to provide information and advice on procurement matters to local officials. These volunteers can be contacted at the telephone numbers shown below. In addition, those with check marks next to their names have volunteered for the "Adopt A Purchasing Agent" program sponsored by the Massachusetts Public Purchasing Officials Association. Under this program, municipal purchasing agents provide assistance to communities who do not have their own purchasing agents. Interested communities may contact the purchasing agents participating in the "Adopt A Purchasing Agent" program at the telephone numbers shown below.

NAME - COMMUNITY	Adopt a P.A.	Contact for Information
The following individuals expressed an interest in this program (in no particular order):		
Carole Kelley,P.A. Middlesex County		(617) 494-4107
Sam Ratta, P.A., Everett	√	(617) 389-2100 x124
Tony Streeter, P.A., City of Boston	√	(617) 725-4564
Rita Cataldi, P.A., Hampden County		(413) 781-8100 x1028
Richard S. Borden, P.A., Fall River		(508) 675-6011
Richard Nelles, Buyer, Somerville		(617) 625-6600 x3408
Diane M. Norris, Asst. Town Mgr., Danvers	√	(508) 777-0001
Robert Tone, Jr., P.A., Pittsfield	√	(413) 499-9470
Barbara Duffy, P.A., Cambridge		(617) 498-9027
Daniel B. Doucette, P.A., Peabody	√	(508) 532-3000 x375
Robert DelColle, P.A., Gloucester	√	(508) 283-4322
Walt Stamper, Danvers Municipal Light		(508) 774-0005
Grace Rogato, P.A., Lynn		(617) 598-4000
Blair R. Kanbar, P.A., Newton	√	(617) 552-7001
Frank Kelley, Com. of Mass. Collective Purch.		(617) 727-2920
Elizabeth B. Burrill, P.A., Haverhill		(508) 374-2309
Donna Blythe-Shaw, Buyer, MWRA		(617) 242-6000 x2504
Joe Cook, Contract Admin., Northampton		(413) 586-6950
Nancy Sousa, Brockton		(508) 580-7165

CITY SOLICITORS AND TOWN COUNSEL ASSOCIATION

The City Solicitors and Town Counsel Association is the oldest and largest association of Municipal Bar Counsel in Massachusetts, an organization strongly committed to the education of attorneys and public officials alike on all issues of legal importance to cities and towns. As a result, the Association has worked closely with the Office of the Inspector General to promote educational efforts designed to achieve a comprehensive understanding of Chapter 30B, the Uniform Procurement Act.

Chapter 30B is a major legislative enactment with far-reaching implications for public officials. This law significantly changes the manner by which cities and towns must now procure anything and everything, from equipment, supplies, and materials to real estate. Since an in-depth understanding of Chapter 30B is essential to the orderly administration of municipal government, the Association encourages all municipal officials to confer with your town counsel or city solicitor to seek assistance in understanding this law.

Public officials are urged to work closely with town counsel or city solicitors when confronting or attempting to resolve problems of interpretation or application of Chapter 30B provisions. Your town counsel or city solicitor is an educational resource which is to be used for guidance and assistance in understanding and using Chapter 30B.

DIRECTORY

MASSACHUSETTS PUBLIC PURCHASING
OFFICIALS ASSOCIATION
Grace Rogato, President
Purchasing Agent, City of Lynn
City Hall
Lynn, MA 01901
(617)598-4000

MASSACHUSETTS ASSOCIATION OF
SCHOOL BUSINESS OFFICERS
Paul Carlson, President-Elect
Amherst-Pelham Regional School District
170 Chestnut Street
Amherst, MA 01002
(413)549-3690

CITY SOLICITORS AND TOWN COUNSEL ASSOCIATION
Robert Ritchie, Esq.
5 East Pleasant Street
Amherst, MA 01002
(413)549-0041

MASSACHUSETTS DEPARTMENT OF REVENUE
Harry Grossman
Chief, Property Tax Bureau
Division of Local Services
200 Portland Street
Boston, MA 02114-1715
(617)727-2300

(for sample specifications:)

NATIONAL INSTITUTE OF GOVERNMENT
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APPENDIX D

RECOMMENDED CODE OF CONDUCT FOR PUBLIC EMPLOYEES

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE INSPECTOR GENERAL
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MEMORANDUM

TO: State, County, and Municipal Agencies and Independent Public Authorities

FROM: Joseph R. Barresi, Inspector General

SUBJECT: Code of Conduct for Public Employees

DATE: July, 1989

My Office is often called upon to investigate allegations involving relationships between public officials and private contractors, and I am frequently asked for guidance by individuals and agencies wishing to ensure that their conduct is above reproach. I have concluded that it would be helpful to develop a model code of conduct that could be adopted by public agencies throughout Massachusetts.

The enclosed Code of Conduct for Public Employees affirms the importance of maintaining the highest standards of ethical conduct in public service. Its purpose is not merely to ensure compliance with the letter of the law. This Code is considerably more detailed and, in some areas, more stringent than the State's conflict-of-interest law. The intent of the Code, which incorporates standards of conduct currently in force within a number of Federal and State agencies, is to encourage behavior which is -- and is perceived to be -- appropriate and ethical.

This Code covers five major areas: gifts and gratuities, reimbursement of travel expenses, honoraria, testimonial and retirement functions, and groundbreaking and dedication ceremonies. This Code is not all-inclusive. It is designed to supplement the State's conflict-of-interest law, Chapter 268A of the General Laws.

The conflict-of-interest law encourages public agencies to establish and enforce standards of conduct. I urge your agency to adopt this Code. If you have questions about the Code, please feel free to contact Pamela Bloomfield, Principal Management Analyst, of my staff.

Code of Conduct for Public Employees

INTRODUCTION

The Massachusetts conflict-of-interest law, Chapter 268A of the General Laws, prohibits public employees from soliciting or accepting gratuities of substantial value for, or because of, their official duties. The law covers all State, county, and municipal employees, as well as employees of independent State authorities, districts, and commissions. The State Ethics Commission, which enforces the conflict-of-interest law, is authorized to impose civil fines of up to $2,000 for each violation of the law and to recover damages. The law also carries criminal penalties, including fines and terms of imprisonment.

The conflict-of-interest law encourages public agencies to establish and enforce standards of conduct. This Code of Conduct is designed to supplement the conflict-of-interest law by setting standards of conduct for all employees with respect to relationships with individuals and entities with whom we conduct our official business. The purpose of this Code is to preserve the integrity of these relationships and to maintain the highest level of public confidence in the impartial performance of our duties.

This Code prohibits certain activities which could result in a conflict of interest or create the appearance of a conflict of interest. Exceptions to the Code's prohibitions are limited to specific circumstances in which an overriding public interest is served by the exception or in which the relationship in question is primarily personal.

Five major areas are addressed by this Code: gifts and gratuities, reimbursement of travel expenses, honoraria, testimonial and retirement functions, and groundbreaking and dedication ceremonies. This Code is not all-inclusive. It does not regulate every conceivable situation in which you may be offered gifts or other items of monetary value. It does not address other activities prohibited by the conflict-of-interest law, such as bribery, participation in official matters affecting one's financial interests or those of one's family or business, and misuse of one's official position. For information or advice on matters not covered by this Code, you should consult our Counsel; you may also seek guidance directly from the State Ethics Commission.

The Code of Conduct for Public Employees was developed by the Massachusetts Office of the Inspector General for public agencies throughout the Commonwealth. The Inspector General recommends that agencies adopt this Code. As used in the Code, "we" and "our" refer to the agency adopting this code; "you" refers to the agency's employees

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I. GIFTS AND GRATUITIES

A. General Restrictions

You may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other item of monetary value from a person, public agency, or private entity you know or have reason to know:

1. Has had, has, or is seeking to obtain contractual or other business or financial relations with us;

2. Conducts or is seeking to conduct business or other activities which are regulated or monitored by us; or

3. Has interests that may be or may give the reasonable impression of being substantially affected by the performance or nonperformance of your official duties.

Example: You may not accept a restaurant lunch from a consultant employed by a firm under contract to us.

Example: You may not accept a Christmas gift from a vendor seeking business with us.

Example: You may not accept a ticket to a sporting event from an individual with whom we have official business.

B. Exceptions

1. You may accept gifts in cases involving a family or personal relationship when the circumstances make clear that the relationship is the motivation for the gift.

2. You may accept nonalcoholic beverages, such as coffee or tea, from public or private entities.

3. You may attend and accept food and beverages at seasonal or celebratory functions, such as Christmas, birthday, or retirement parties, hosted by public entities.

4. You may accept food and beverages in connection with attendance at working meetings held in the office of a public entity.

5. You may accept food and beverages in connection with attendance at widely attended meetings or gatherings held by a private trade or professional association in an office or other business setting when you are attending the meeting or gathering in your official capacity for informational, educational, or other similar purposes.

Example: You may not accept food and beverages at a hospitality suite hosted by one or more private firms.

Example: You may not accept a restaurant dinner hosted by a private trade association, even if the event is informational and widely attended.

6. You may accept loans from banks or other financial institutions to finance proper and usual customer activities, such as home mortgage loans and automobile loans. If the bank or financial institution is an entity with which you have or might reasonably expect to have dealings in your official capacity, you must be able to demonstrate that the loan has been granted on current customary terms; you must also provide written disclosure of the loan to your supervisor.

7. You may accept unsolicited advertising or promotional materials of nominal value.

Example: You may accept an unsolicited, inexpensive promotional pen or calendar.

Example: You may not accept a leather portfolio.

II. REIMBURSEMENT OF TRAVEL EXPENSES

A. General Restrictions

You may not accept reimbursement for travel expenses from a person or entity which falls within the scope of Section IA, above.

B. Exceptions

1. If you deliver a speech or participate in a conference, we may elect to accept reimbursement from the sponsor of the speech or conference for your actual and necessary travel expenses. In this case, we -- not the sponsor -- will pay or reimburse you in accordance with our travel policy, and bill the sponsor for the appropriate amount.

2. If we determine that employee travel is a necessary component of a vendor evaluation process, we may elect to require competing vendors to reimburse us for actual and necessary travel expenses incurred in connection with the evaluation. In this case, we -- not the vendors -- will pay or reimburse you in accordance with our travel policy. The publicly advertised request for proposals or bids must set forth our procedures for calculating and billing all competing vendors for the appropriate amounts.

III. HONORARIA

A. General Restrictions

You may accept honoraria or other monetary compensation from an outside source in return for a public appearance, speech, lecture, publication, or discussion only if all of the following conditions are met:

1. Preparation or delivery of the public appearance, speech, lecture, publication, or discussion is not part of your official duties;

2. Neither the sponsor nor the source, if different, of the honorarium is a person or entity which falls within the scope of Section IA, above;

3. You do not use office supplies or facilities not available to the general public in the preparation or delivery of the public appearance, speech, lecture, publication, or discussion; and

4. You do not take office time for the preparation or delivery of the public appearance, speech, lecture, publication, or discussion.

Example: You may accept an honorarium for a magazine article prepared outside working hours.

Example: You may not accept an honorarium for delivering a speech in your official capacity.

B. Exceptions

1. You may accept awards, certificates, or other items of nominal value given for a speech, participation in a conference, or a public contribution or achievement.

Example: You may accept a framed certificate of appreciation.

Example: You may not accept an engraved pewter bowl.

IV. TESTIMONIAL AND RETIREMENT FUNCTIONS

A. General Restrictions[1]

1. You may not solicit contributions, sell tickets, or otherwise seek or accept payment for a testimonial or retirement function, or any function having a similar purpose, held for yourself or any other employee if the contributor is a person or entity which falls within the scope of Section IA, above, and the admission price or payment exceeds the actual per-person cost of food and beverages served at the function.

Example: You may not offer or sell tickets to a testimonial dinner to contractors doing business with us if the ticket price includes a contribution toward a gift.

2. You may not accept food, beverages, or gifts at any testimonial or retirement function, or any function having a similar purpose, if such food, beverages, or gifts are paid for or subsidized by a person or entity which falls within the scope of Section IA, above.

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[1]Chapter 268, §9A, of the General Laws currently prohibits anyone from selling, offering for sale, or accepting payment for tickets to, or soliciting or accepting contributions for, testimonial dinners or functions held on behalf of anyone employed by a law enforcement, regulatory, or investigatory agency of the Commonwealth or any political subdivision of the Commonwealth. The law carries a maximum fine of $500.

Example: *You may not accept a free admission to a retirement luncheon if the cost of your admission is paid, directly or indirectly, by one or more contractors doing business with us.*

Example: *You may not accept a retirement gift if the gift was paid for with the proceeds of tickets purchased by contractors doing business with us.*

B. Exceptions

None.

V. GROUNDBREAKING AND DEDICATION CEREMONIES

A. General Restrictions

1. You may not request or require any person or entity which falls within the scope of Section IA, above, to sponsor or contribute to any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project. If we determine that a groundbreaking or dedication ceremony for a public works project serves a legitimate public purpose, we may elect to fund such a ceremony. We may plan and pay for the ceremony. Alternatively, we may include the ceremony-related services in the construction bid specifications for the public works project.

2. You may not accept food, beverages, or gifts at any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project if the food, beverages, or gifts are paid for or subsidized by a person or entity which falls within the scope of Section IA, above.

B. Exceptions

None.